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23527

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. ~~442~~ 213.

WILLIAM B. TYLER, PLAINTIFF IN ERROR,

vs.

THE JUDGES OF THE COURT OF REGISTRATION.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

FILED FEBRUARY 27, 1900.

(17,656.)

23528

(17,656.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 542.

WILLIAM B. TYLER, PLAINTIFF IN ERROR,

vs.

THE JUDGES OF THE COURT OF REGISTRATION.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 1, 1900.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the justices of the supreme judicial court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between William B. Tyler, of Peabody, in the county of Essex, in the said Commonwealth, petitioner, and The Judges of the Court of Registration, established at the said Boston, respondents, upon a petition for a writ of prohibition, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said petitioner, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twelfth day of March next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twelfth day of February, in the year of our Lord one thousand nine hundred.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
OLIVER WENDELL HOLMES,
Chief Justice of the Supreme Judicial Court
of Massachusetts.

1½ COMMONWEALTH OF MASSACHUSETTS, } ss.:
Suffolk, }

And now here the judges of the supreme judicial court of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said supreme judicial court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John Noble, clerk of said supreme judicial court within and for said county of Suffolk, have hereto set my hand and the seal of said court this twentieth day of February, A. D. one thousand nine hundred.

[SEAL.] JOHN NOBLE, *Clerk.*

2 (*Bond on Writ of Error.*) [STAMP.]

Know all men by these presents that we, William B. Tyler, of Peabody, in the county of Essex and Commonwealth of Massachusetts, as principal, and the Fidelity and Deposit Company of Maryland, incorporated under the laws of Maryland, as surety, are held and firmly bound unto Leonard A. Jones, of Boston, and Charles T. Davis, of Worcester, in the said Commonwealth, judges of the court of registration of the said Commonwealth, in the full and just sum of five hundred dollars, to be paid to the said Leonard A. Jones and Charles T. Davis, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this twelfth day of February, in the year of our Lord one thousand and nine hundred.

Whereas lately, at a sitting of the supreme judicial court of Massachusetts for the county of Suffolk upon a petition depending in said court between the said William B. Tyler, as petitioner, and the said Judges of the Court of Registration, as respondents, judgment was rendered against the said William B. Tyler, and the said William B. Tyler having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Judges of the Court of Registration citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, on the twelfth day of March next:

Now, the condition of the above obligation is such that if the said William B. Tyler shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then

the above obligation to be void; else to remain in full force and virtue.

WILLIAM B. TYLER. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By HARRISON HUME, *Resident Vice-President.*

Attest: HENRY E. RUSSELL,
Resident Assistant Secretary.

[Seal of Corporation.]

Signed, sealed, and delivered in presence of—
WILLIAM I. NORTON.

Approved:
OLIVER WENDELL HOLMES,
Chief Justice of the Supreme Judicial Court.

A true copy of the bond taken by the chief justice at the time of signing the citation upon the writ of error named in said bond, which bond is on file in my office.

Attest: JOHN NOBLE,
Clerk of Supreme Judicial Court for County of Suffolk.

2½ The within bond is hereby approved on behalf of the defendants in error.

HOSEA M. KNOWLTON,
Attorney General,
By FRANKLIN T. HAMMOND,
Assistant Attorney General.

3 & 4 COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Suffolk, }

To all persons to whom these presents shall come, Greeting:

Know ye that among the records of our supreme judicial court, holden at Boston, within and for our said county of Suffolk, from the first day of January, in the year of our Lord one thousand nine hundred, to the first day of January, A. D. 1901, it is thus contained, the following being the entire record of the case:

5 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court, Suffolk County.

WILLIAM B. TYLER, Petitioner,
v.
THE JUDGES OF THE COURT OF REGISTRATION, Respondents.

Petition.

To the honorable the justices of the supreme judicial court:

The petition of William B. Tyler of Peabody in the county of Essex showeth as follows:

1. On the 22d of December, 1898, David E. Gould of Brookline

in the county of Norfolk and George H. Jones of Chelsea in the county of Suffolk filed with the recorder of the court of registration at Boston, established in pursuance of a certain act of the general court passed in the year 1898, and entitled "An act to provide for registering and confirming titles to land," a certain application, in the form for that purpose contained in the said act, to have certain land therein described brought under the operation and provisions of the said act, and to have their title therein registered and confirmed, alleging in their said application that they were the owners in fee-simple of the said land which was therein described as certain parcels of land situated partly in Chelsea, in the county of Suffolk, and partly in Everett, in the county of Middlesex, being a portion of the land known as the Carter farm and a portion of the land known as the Heard estate, and shown on a plan of portions of the Carter farm and Heard estate in Chelsea and Everett, Mass., by Joseph R. Carr, C. E., bearing date November 1, 1898, and filed with the said application, which parcels were separately described as therein further set out. And one of the said parcels of land was therein described as a certain parcel of land situated in said Everett (marked "section B" on said plan) bounded southerly by the northerly line of Chelsea street, westerly by land known as the Nichols farm, northerly by the proposed extension westerly of Webster avenue, and easterly by land now or formerly of Butman. And the said application contained the other matters and was signed and sworn in the manner specified in the said act in respect of applications for registration of title.

6

2. Such proceedings were afterwards had upon the said application in the said court of registration that, on the 5th of January, 1899, a certain examiner of title, who had been appointed by the judge of registration, as in the said act provided, and to whom the said application had been referred by the said court of registration, filed in the said court a report thereon, concluding with a certificate that in his opinion the said applicants had a good title, as alleged in their said application, and proper for registration.

3. Thereupon, on the said 5th of January, 1899, the said court of registration ordered the publication in the "Boston Daily Advertiser," a newspaper published at the said Boston, of a certain notice addressed to divers persons therein named and to all whom it might concern, reciting the said application and the said description of the said land, and citing them to appear at the court of registration to be held at the said Boston on the 30th of January, 1899, at ten o'clock in the forenoon, to show cause, if any they had, why the prayer of the said petition should not be granted; and stating that unless they appeared at the said court at the time and place aforesaid their default would be recorded, and the said petition would be taken as confessed, and they would be forever barred from contesting the said petition or any decree entered thereon, which notice, dated the 5th of January, 1899, and attested by the said recorder, was afterwards published by the said recorder in the said "Boston Daily Advertiser," on the 6th of January, 1899.

4. Your petitioner is seised for an estate in fee-simple in posses-

sion of a certain parcel of land situate in the said Everett, bounded towards the east by Francis street, and west by land formerly of Carter, and measuring 40 feet upon each of the said boundaries, and 120 feet in depth between them, and being part of certain land formerly of one Butman, and being the easterly boundary of part of the said parcel of land described in the said application and marked "section B" on the said plan, as hereinbefore mentioned.

7

5. Your petitioner claims that the boundary line between his said parcel of land and the said land on the westerly side thereof included in the said parcel of land so described in the said application, is not correctly shown on the said plan referred to in the said application, and filed therewith, and that the parcel of land marked "section B" on the said plan encroaches upon and includes part of the said land of your petitioner.

6. The said court of registration intends to proceed, at the time and place specified in the said notice, to determine all matters relating to the title of the said applicants to the said parcel of land described in the said application, and marked "section B" on the said plan, and, among other matters, to determine the extent and limits of the land comprised therein to which they may have a good title proper for registration, and the boundaries of such land, including the boundary between the same and the said land of your petitioner, and upon finding that they have such title thereto, to enter a decree of confirmation and registration, which, according to the provisions of the said act, shall bind such land and quiet the title thereto, subject only to the exceptions in the said act mentioned, and be conclusive upon and against all persons, including the Commonwealth, whether mentioned by name in the said application or notice, or included in the general description, "to all whom it may concern."

7. Your petitioner submits that the said court of registration has no jurisdiction to hear and determine the said matters, or any of them, or to enter any such decree of confirmation or registration by reason that the provisions of the said act purporting to make such decree conclusive upon and against persons having any interest in land so registered, although they may have no notice of any of the said proceedings for registration, would, if valid, have the effect of depriving such persons of their property without due process of law, and otherwise than by the law of the land. And that the said act purports to give judicial powers to the recorder and assistant recorders therein mentioned who are not judicial officers appointed and holding their offices as provided in the constitution of this Commonwealth in respect of judicial officers, and also to give them powers to deprive persons of their property in such registered land without due process of law, and otherwise than according to the law of the land. And that the operation of the said act in other respects and all other proceedings and dealings under it in respect of land so registered, depend for the effect thereby intended upon such conclusive effect of the said original decree of registration and the exercise of such powers by the recorder and assistant recorders.

And that the said act is therefore, and for other reasons, contrary as well to the Constitution of the United States as to the constitution of this Commonwealth.

8 Wherefore your petitioner prays a writ of prohibition to be directed to the judges of the said court of registration, to prohibit them from further proceeding in the registration of the said parcel of land described in the said application, and marked "section B" on the said plan, or in the determination of the boundary between the said parcel of land, or any part thereof, and the said land of your petitioner.

STOREY & THORNDIKE,
Counsel for the Petitioner.

Filed January 25, 1899.

9&10 This petition for writ of prohibition was entered in our said court on the twenty-fifth day of January, A. D. 1899, and it was thereupon ordered as follows, to wit:

11–14 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss.*:

Supreme Judicial Court.

On the foregoing petition it is ordered that the petitioner give notice to the said respondents to appear before the justices of this court, to be holden at Boston, within and for said county of Suffolk, on the second Tuesday of February next, by serving them with an attested copy of said petition and of this order thereon fourteen days, at least, before said second Tuesday of February next, that they may then and there show cause why the prayer of said petition should not be granted.

By the court:

JOHN NOBLE, *Clerk.*

January 26, 1899.

15&16 Upon which order is the following return of the officers serving the same, viz:

SUFFOLK, *ss.*:

BOSTON, *January 26th*, 1899.

I this day served the within petition and order of court thereon on the within-named respondents, Leonard A. Jones and Charles Thornton Davis, judges of the court of registration, by delivering to each in hand an attested copy thereof for their appearance at court as within directed.

FRED H. SEAVEY,
Deputy Sheriff.

Service & travel	1.08
Copies	3.00
	4.08

And afterwards said respondents appeared by the attorney general of the Commonwealth, and on the twenty- y of February, in said year, filed their answer as follows, to

Respondents' Answer.

now come the respondents Leonard A. Jones and Charles T. as they are, respectively, judge of registration and assistant f registration, duly appointed and qualified, of the court of ation, established by chapter 562 of the Acts of the General passed in the year 1898, known as "the land registration nd for answer to the petition in this case, say,—

They admit the allegations contained in paragraph 1 of said n; they file herewith, as a part of the case (see Annex X), a certified documents and plan from said court of registration, ng the proceedings on the application of said David E. Gould among which their application for registration is numbered), omitting the description of the property, except the section "section B;" the copy of the plan accompanying said appli- , drawn on a reduced scale, is numbered 3, and they say that diately after said application was filed, to wit, on December 98, the said court of registration entered an order referring pplication to Malcolm McLoud, Esq., a duly appointed exam- f titles, for examination and report, a copy of which order is bered 6.

They admit the allegations contained in paragraph 2 of said on; and they say that the said Malcolm McLoud, Esq., filed eport as therein alleged, after having searched the records and tigated all facts stated in said application or otherwise brought s notice, the copy of which report is numbered 7, and that on ary 5, 1899, on the filing of said report, notice thereof was by the recorder of said court to said applicants, as required w.

) They admit the allegations contained in paragraph 3 of said ion; and they further say that, in pursuance of said statute, on ary 7, 1899, said court by proper order caused a duly attested of the notice mentioned in said petition to be mailed by the rder to every person named therein whose address was known, and also, by proper order, caused a duly attested copy of said notice to be posted in a conspicuous place on each parcel of land included in said application, once on January 1899, and once again on January 16, 1899, by M. Frank Eastman, eputy sheriff for the county of Middlesex, and Fred H. Seavey, eputy sheriff for the county of Suffolk, who respectively duly le return of such service by posting as aforesaid; and the said rder duly filed before the return day a certificate of the service aid notice by publishing and mailing as directed by the court— as required by law; and the certified document numbered 8 tains a copy of said notice, of said order directing the service of l notice by publishing, mailing, and posting on the land, of the

recorder's certificate of service, and of the officers' returns of such service.

(4.) They admit the allegations contained in paragraph 4 of said petition, and annex hereto, marked "Exhibit 1," a plan showing the petitioner's parcel and the portion of said section B therein referred to, which said parcel was acquired by said petitioner by deed from Charles B. Farley, dated January 19, 1899, and recorded with Middlesex south district deeds on January 23, 1899, in Book 2713, page 521.

(5.) They admit that the petitioner claims, as alleged in paragraph 5 of said petition, that the boundary line between his said parcel of land and a portion of said section B is not correctly shown on the plan accompanying said application, and that the petitioner claims that said section B, as shown on said plan, encroaches upon and includes part of the said land of the petitioner, but they do not admit that such is the fact; and they say that the petitioner is entitled, under the provisions of St. 1898, c. 562, to appear and answer in the proceedings in said court and to have his claim as aforesaid judicially determined according to such provisions; but they say that the petitioner has not so appeared nor answered.

(6.) They deny the allegations contained in paragraph 6 of said petition, but they say that on January 30, 1899, the said court of registration allowed a motion by which the proceedings regarding the land designated as section B aforesaid were continued to April 3, 1899, at 10 o'clock a. m., to await the decision of this court in the present case, a copy of which motion is numbered 12 among said certified documents; and they furthermore say that, in pursuance of the authority conferred upon them to exercise the jurisdiction committed to the said court of registration by law, they do intend, unless restrained by a writ of prohibition from this court, at the time to which the said application for registration of said section B now pending in said court of registration has been or may be continued, and after the decision of this court in this case, to proceed to determine in accordance with the provisions of said St. 1898, c. 562, all matters relating to the said application, to register the title of said applicants to the said parcel of land, and to enter such decree in the premises as may be fit and proper.

(7.) They deny the allegations contained in paragraph 7 of said petition, and say that chapter 562 of the acts of the year of 1898 does not contravene the provisions either of the Constitution of the United States or of the constitution of this Commonwealth, for any of the reasons therein specified or for any other reasons, but that the said provisions are in accordance with both of said constitutions, and are valid and binding; that the respondents constituting the court of registration have jurisdiction to hear and determine all questions arising upon the application for the registration of the title to the parcel of land aforesaid, and also over such other questions as may come before such court under the said act.

(8.) They say that, in accordance with the provisions of St. 1898, c. 562, said court of registration has made certain rules of practice and procedure in said court, a copy of which rules is filed herewith

part of the case, and that said rules have been examined and ap-
ed by the justices of the supreme judicial court, and are now
ll effect and operation. (See Annex Y.)
.) And the respondents further say that the petition in this
se does not set forth any legal cause for granting the prayer
eof.

HOSEA M. KNOWLTON,
Attorney General.

iled February 25, 1899.

opy, including Annex X, and Annex Y, and Annex Z, being
h. 1.

& 24

ANNEX X.

MMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Court of Registration.

The documents and plan hereto annexed, omitting from the peti-
n Exhibits "A" and "B," except the description of section "B"
said Exhibit A, and Exhibit "A" from each of the notices filed
Middlesex, south district, and Suffolk registries, respectively, are
ue copies of the originals on file in the land registration office.
Attest, with the seal of said court:

[Seal Massachusetts Court of Registration.]

CLARENCE C. SMITH, *Recorder.*

No. 1.

OMMONWEALTH OF MASSACHUSETTS:

o the honorable the judge of the court of registration:

We, the undersigned, hereby apply to have the land hereinafter
escribed brought under the operation and provisions of the land
gistration act, and to have our title therein registered and con-
rmed. And we declare:

(1.) That we are the owners in fee-simple of a certain parcel of
nd, with the buildings thereon, situate in Chelsea, in the county
f Suffolk, and in Everett, in the county of Middlesex, both in the
ommonwealth of Massachusetts, and particularly described as set
rth in Exhibit A filed herewith.

The public and private ways shown on a plan filed herewith are
f the width and their lines are as laid down on said plan, and your
etitioners respectfully ask to have the lines of said ways determined
o be as laid down on said plan.

Said plan was drawn by Joseph R. Carr, C. E., dated Nov. 1, 1898.

Second. A certain parcel of land situated in said Everett (marked
section B" on said plan), bounded southerly by the northerly line
f Chelsea street; westerly by said land known as the "Nichols

farm;" northerly by said proposed extension westerly of Webster avenue, and easterly by land now or formerly of Butman.

26 (2.) That said land at the last assessment for taxation was assessed at $64,900 and the buildings at none; total assessment, $64,900.

(3.) That we do not know of any mortgage or encumbrance affecting said land, or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion or expectancy other than as follows:

The mortgage given by us, George H. Jones and David E. Gould, to Frank W. Reynolds and John D. Bryant, trustees under the will of Elizabeth M. Reynolds, late of Brookline, in the county of Norfolk and said Commonwealth, deceased, and trustees under the will of Margaret B. Carter, late of said Boston, deceased, for $90,000, dated November 26th, 1898, recorded with Suffolk deeds, Book 2569, page 596, and with Middlesex (south district) deeds, Book 2701, page 44.

(4.) That we obtained title by deed from Frank W. Reynolds and John D. Bryant, trustees as aforesaid, dated November 26th, 1898, and recorded in the registry of deeds for the county of Suffolk, Book 2569, page 593, and in the registry of deeds for the county of Middlesex (south district), Book 2701, page 41.

(5.) That said land is unoccupied.

(Name) ——. (Post-office address) ——. (Nature of occupancy) ——.

(6.) That the names in full and addresses so far as known to us of the occupants of all lands adjoining said land are as follows:

(Name) ——. (Post-office address) ——.

As shown on Exhibit B hereto annexed.

(7.) That the names in full and addresses so far as known to us of the owners of all lands adjoining said land are as follows:

(Names) ——. (Post-office address) ——.

27 As shown on Exhibit B hereto annexed.

(8.) That we are married to Lizzie E. Jones and Ada J. Gould, respectively.

(9.) That our full names, residences, and post-office address are as follows:

(Name.)	(Post-office address.)
George H. Jones,	465 Washington Ave., Chelsea, Mass.
David E. Gould,	Westbourne terrace, Brookline, Mass.

Dated this twelfth day of December, in the year eighteen hundred and ninety-eight.

DAVID E. GOULD.
GEORGE H. JONES.

COMMONWEALTH OF MASSACHUSETTS, *ss:*

DECEMBER 12TH, 1898.

Then personally appeared the above-named George H. Jones and David E. Gould, known to me to be the signer- of the foregoing

petition, and made oath that the statements made therein, so far as made of their own knowledge, are true, and so far as made upon information and belief that they believe them to be true.

Before me—

RODNEY LUND,
Justice of the Peace.

28 [Endorsed:] No. 21. David E. Gould *et al.*, petitioners. Petition for registration of land, dated December 12, 1898. We hereby assent to the granting of the within petition. ——, mortgagee. Frank W. Reynolds, John D. Bryant, trustees. For petitioner, D. E. Gould, *pro se.* For respondent, —— ——. Court of registration. Filed Dec. 22, 1898, 9 o'clock 10 min. a. m.

29 No. 2.

Schedule of Documents Filed with Petition.

Deed of Frank W. Reynolds & *al.*, trs., to Geo. H. Jones & *al.*, dated 26 Nov., 1898, & rec'd Suffolk deeds, 2569, 593.

Certified copy of mortgage, subject to which said petition is made, from Geo. H. Jones & *al.* to Frank W. Reynolds & *al.*, trs., dated Nov. 26, 1898, and recorded with Suffolk deeds, 2569, 596.

Certified copy of lease, subject to which said petition is made.

Plan of land described in petition made by Jos. R. Carr, d't'd Nov. 1, 1898.

30 [Endorsed:] No. 21. David E. Gould & *al.*, petitioners. Schedule of documents filed with petition. Court of registration. Filed Dec. 22, 1898, 9 o'clock 10 min. a. m.

(Here follows diagram marked p. 31. omitted in printing per stipulation.)

32&33 No. 4.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Court of Registration.

To all whom it may concern:

David E. Gould and George H. Jones, of Chelsea, in the county of Suffolk and Commonwealth aforesaid, hereby give notice that they have filed a petition in said court to have the title to certain land therein described registered and confirmed pursuant to the land registration act. Said land is situated in Chelsea and Everett, in the counties of Suffolk and Middlesex, in said Commonwealth, and bounded and described as follows:

(See Exhibit "A.")

Said petition was filed with the recorder, at Boston, in the county of Suffolk, on the 21st day of December, in the year eighteen hundred and ninety-eight.

Dated this 22nd day of December, in the year eighteen hundred and ninety-eight.

DAVID E. GOULD,
In Behalf of George H. Jones.

34 [Endorsed:] 53. Wanted. No. 21. D. E. Gould *et als.*, petitioners. Notice of filing petition, dated December 22, 1898. Middlesex reg. of deeds, so. dist. Dec. 24, 1899, 11 h. 10 m. a. m., recorded. P'd 1.25. Compared. Cambridge, Dec. 24, 1898. At 11 o'clock and 10 minutes a. m. received and entered with Middlesex so. dist. deeds, Book 2707, page 81. Attest: Edwin O. Childs, register.

35 No. 5.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Court of Registration.

To all whom it may concern:

David E. Gould and George H. Jones, of Chelsea, in the county of Suffolk and Commonwealth aforesaid, hereby give notice that they have filed a petition in said court to have the title to certain land therein described registered and confirmed pursuant to the land registration act. Said land is situated in Chelsea and Everett in the counties of Suffolk and Middlesex, in said Commonwealth and bounded and described as follows:

See Exhibit "A."

Said petition was filed with the recorder, at Boston, in the county of Suffolk, on the 21st day of December, in the year eighteen hundred and ninety-eight.

Dated this twenty-second day of December, in the year eighteen hundred and ninety-eight.

DAVID E. GOULD,
And in Behalf of Geo. H. Jones.

36 [Endorsed:] 245. 32705. No. 21. David E. Gould *et al.*, petitioners. Notice of filing petition, dated December 22, 1898. Suffolk registry of deeds. Dec. 23, 1898, received for record 10.55 a. m. 85c. Boston, December 23, 1898. At 10 o'clock and 55 minutes a. m. received and entered with Suffolk deeds, Liber 2577, page 245. Attest: Thos. F. Temple, register.

No. 6.

37 [SEAL.]

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Suffolk, }

Court of Registration.

To Malcolm McLoud, Esq.:

In the matter of the petition of David E. Gould *et al.*, dated December 12, 1898, and numbered 21 on the files of said court, you are hereby authorized and directed to search the records and investigate all facts stated in said petition or otherwise brought to your notice in reference to said petition, and to file in the case as soon as may be your report thereon, concluding with your opinion upon the title to the land therein described.

Dated this twenty-second day of December, in the year 1898.

By order of the court.

Attest: CLARENCE C. SMITH, *Recorder.*

To the honorable the judge of the court of registration:

In accordance with the foregoing order I have searched the records and investigated all the facts stated in the above-named petition, or otherwise brought to my notice, and herewith file my report thereon, concluding with my opinion upon the title.

Dated this fifth day of January, in the year 1899.

MALCOLM McLOUD, *Examiner.*

38 [Endorsed:] No. 21. David E. Gould *et al.*, petitioners. Reference to Malcolm McLoud, Esq., to examine title. Dated December 22, 1898. Court of registration. Filed Jan. 5, 1899, 10 o'clock 30 min. a. m.

39 No. 7.

Court of Registration.

Report.

To the honorable the judge of the court of registration:

In accordance with your order dated Dec. 22nd, 1898, in the matter of the petition of David E. Gould *et al.*, dated Dec. 12th, 1898, and numbered twenty-one on the files of said court, I have examined the title of the land situated in Chelsea and Everett, described in said petition and being the land shown on plan entitled "Portions of the Carter farm and Heard estate, in Chelsea and Everett, Mass., by Jos. R. Carr, C. E.," dated Nov. 1st, 1898, duly recorded with Suffolk and Middlesex deeds, and find the title of record to be good in David E. Gould and George H. Jones, subject to the mortgage given to Frank W. Reynolds and John D. Bryant, trustees, of which a certified copy is on file with said petition, and in my opinion said Gould and Jones are the sole owners in fee of the

premises described in said mortgage, subject only to said mortg
and to unpaid taxes of 1898.

Respectfully yours, MALCOLM McLOUI

Boston, January 5th, 1899.

Sheet No. 136, title No. 21.

40 [Endorsed:] No. —. —— ——, petitioner.

41 No. 8.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Court of Registration.

To Howard C. Morse, William L. Farnsworth, Abbie A. Rog
Bray Wilkins, John H. Horan, Henry A. Emerson, trustee; W
liam R. Richards, E. B. Richards, Ada M. Davis, and Kate
Whitney, of Boston, in said county of Suffolk; Clarence S. Wh
ney, S. M. Cathcart, Angie L. Young, Lillian S. Chapel, Susa
Clark, Third Congregational Society, William S. Chipman, An
S. Chipman, James Gould, Robert Parkin, Charles C. Donn
Elizabeth C. Binns, Mary Uman, Ella F. Davis, Charles S. Ma
Mary W. Bliss, M. Eugene Rice, John H. Jones, John C. Lo
John H. Low, and William D. Baker, of Chelsea, in said county
Suffolk; Edward E. Greenwood, Elizabeth Chisholm, Delia Gow
Herbert A. Wells, L. C. Clifford, Jr., James R. Orr, Carol
Schenzenbecker, B. Schenzenbecker, William H. Peavey, Gr
Malson, Daniel McAdam, William M. Guptill, H. E. User, F.
Aldrich, Joseph Davies, T. E. Rockwell, A. D. Malloch, L.
Scott, L. N. Van Epps, F. O. Sargent, Ronella F. Francis, Je
miah Lynch, E. W. Pressey, Sarah M. Parnell, Elmira Buzz
Charles W. Richardson, Heirs of Elizabeth M. Blake, N. J. Me
Mary E. Perry, Charles W. Greenwood, Jennie M. Rhines, Ma
A. Stimpson, and the City of Everett, of Everett, in the county
Middlesex and said Commonwealth; Gustave Anderson and
ward A. Foster, of Somerville, in said county of Middlesex; Sa
H. Hastey, of Malden, in said county of Middlesex; Emma
Bowker, of Waltham, in said county of Middlesex, Arthur
Bowditch, of Brookline, in the county of Norfolk and said Co
monwealth; Elizabeth A. Richardson, of Wellesley, in said cou
of Norfolk; Charles B. Farley and Florence E. Blackett, of P
body, in the county of Essex and said Commonwealth; Elizab
S. Stimpson, of Silver Lake, in said Commonwealth, and Will
J. McNeil, of Petaluma, in the State of California, and to
whom it may concern:

Whereas a petition has been presented to said court by David
Gould, of said Brookline, and George H. Jones, of said Chelsea,
register and confirm their title in the following-described land:

Certain parcels of land situated partly in said Chelsea, and par

in said Everett, being a portion of the land known as the "Carter farm," and a portion of the land known as the "Heard estate," believed to be correctly shown on a plan of "Portions of the Carter farm and Heard estate in Chelsea and Everett, Mass.," by Jos. R Carr, C. E., bearing date November 1st, 1898, and duly recorded, bounded and described as follows:

First. A certain parcel of land situated in said Everett (marked "section A" on said plan), bounded southerly by the proposed extension westerly of Webster avenue, as shown on said plan, and by Union street, as shown on said plan; westerly by the "Nichols farm," so called; northerly by land now or formerly of Bliss, and easterly by land now or formerly of Butman.

Second. A certain parcel of land situated in said Everett (marked "section B" on said plan), bounded southerly by the northerly line of Chelsea street; westerly by said land known as the "Nichols farm;" northerly by said proposed extension westerly of Webster avenue, and easterly by land now or formerly of Butman

Third. A certain parcel of land situated in said Everett (marked "section C" on said plan), bounded southerly by the northerly line of Chelsea street; westerly by land now or formerly of Butman; northerly by said proposed extension westerly of Webster avenue, and easterly by the westerly line of Malden street.

Fourth. A certain parcel of land situated in said Everett (marked "section D" on said plan), bounded southerly by said proposed extension westerly of Webster avenue; westerly by land now or formerly of Butman; northerly by land now or formerly of said Butman; and easterly by the westerly line of Malden street.

Fifth. A certain parcel of land situated in said Everett (marked "section E" on said plan), bounded southerly by Webster avenue; westerly by the easterly line of Malden street; northerly by land now or formerly of McNeil, Hoyt, and others, and easterly by the county line between said Everett and Chelsea.

Sixth. A certain parcel of land situated partly in said Everett and partly in said Chelsea (marked "section F" on said plan), bounded southerly by the northerly line of the county road, so called; westerly by the easterly line of Malden street, in Everett; northerly by Reynolds avenue; easterly by a line parallel with and distant sixty feet westerly from the westerly line of Bassett street.

Seventh. A certain parcel of land situated partly in said Everett and partly in said Chelsea (marked "section G" on said plan), bounded southerly by Reynolds avenue; westerly by the easterly line of Malden street in said Everett; northerly by Webster avenue; easterly by Bassett street in said Chelsea to land heretofore conveyed to Whitney; southerly again by said land now or formerly of said Whitney, and easterly again by said land now or formerly of said Whitney, ninety-five feet, more or less, to said Reynolds avenue.

42 Eighth. A certain parcel of land situated in said Chelsea (marked "section H" on said plan), bounded westerly by Bassett street; northerly by Webster avenue; easterly by the west-

erly line of Washington avenue, and southerly by a line parallel with and distant ninety-five feet southerly from the southerly line of Webster avenue.

Ninth. A certain parcel of land situated in said Chelsea (marked "section K" on said plan), bounded southerly by Reynolds avenue; westerly by land now or formerly of the Third Congregational Church; northerly by a line parallel to and distant southerly ninety-five feet from the southerly line of Webster avenue, and easterly by the westerly line of Washington avenue.

Tenth. A certain parcel of land situated in said Chelsea (marked "section L" on said plan), bounded southwesterly by Bloomingdale street, there measuring seventy-four feet, more or less; westerly by Carter street; northerly by land now or formerly of Slade, there measuring sixty-four and $\frac{14}{100}$ feet, more or less; westerly again by said land of Slade; northeasterly by the curved southerly line of Washington avenue; southeasterly by land now or formerly of Hillbourn; southwesterly by land now or formerly of George H. Jones, there measuring ninety-eight feet, more or less, and southeasterly again by said land now or formerly of George H. Jones.

Eleventh. A certain parcel of land situated in said Chelsea (marked "section M" on said plan), bounded southwesterly by Orange street, now so called, formerly Auburn street; westerly by Carter street; northeasterly by land of owners unknown, and southeasterly by land of owners unknown. Containing by estimation 6,950 square feet, more or less, and being lot fifty-nine on a "plan of land in Chelsea belonging to the heirs of Joshua Carter, by John Low, October, 1853," which plan is recorded with Suffolk deeds, Plan Book 1, plan No. 30.

Twelfth. A triangular parcel of land situated in said Chelsea (marked "section N" on Carr's plan of November 1st, 1898, above referred to), being so much of lot numbered seven on the aforementioned plan by John Low as lies northeasterly of the northeasterly line of Auburn street, so called, on said Low's plan (now Orange street), prolonged northwesterly so as to run through said lot No. 7; said prolonged line being the northeasterly line of the proposed extension of said Orange street, as shown on said Carr's plan of November 1st, 1898.

Thirteenth. A certain parcel of land situated in said Chelsea (marked "section O" on said plan of November 1st, 1898, by J. R. Carr), bounded southerly by the curved northerly line of the proposed extension of Orange street as shown on said Carr's plan; westerly by land now or formerly of Low two hundred and thirty feet; northerly by the southerly line of the county road, so called, one hundred forty-seven feet, more or less, to land now or formerly of James Gould, and easterly by land now or formerly of James Gould.

Fourteenth. A certain parcel of land situated in said Chelsea and Everett (marked "section P" on said plan), bounded southerly by the northerly line of the proposed extension of Orange street, as shown on said Carr's plan; westerly by land now or formerly of Stimpson; northerly by the curved southerly line of the county road, and

easterly two hundred thirty feet by land now or formerly of Annie S. Chipman.

Also the fee and soil of the streets, roads and ways shown on said plan so far only as we own and have the right to convey the same, and so far only as the same or any of them adjoin the lands, or any of them, hereby conveyed, and subject to the use of such streets by the grantors and all claiming under them, and by any and all persons to whom any of the Carter farm or of the Heard estate has heretofore been sold or agreed to be sold, and by any and all persons for all purposes for which streets may be lawfully used in the cities of Chelsea and Everett.

You are hereby cited to appear at the court of registration, to be held at Boston, in said county of Suffolk, on the thirtieth day of January, A. D. 1899, at ten o'clock in the forenoon, to show cause, if any you have, why the prayer of said petition should not be granted. And unless you appear at said court at the time and place aforesaid your default will be recorded, and the said petition will be taken as confessed, and you will be forever barred from contesting said petition or any decree entered thereon.

Witness Leonard A. Jones, Esquire, judge of said court, this fifth day of January, in the year eighteen hundred and ninety-nine.

Attest with the seal of said court.

[SEAL.] CLARENCE C. SMITH, *Recorder.*

43 In the matter of said petition the recorder is hereby ordered to serve the foregoing citation by publishing the same forthwith in the Boston Daily Advertiser, a newspaper published in Boston, in the county of Suffolk and said Commonwealth, and by causing a duly attested copy thereof to be mailed, within seven days after such publication, to every person named in said citation whose address is known.

It is further ordered that a duly attested copy of said citation shall be posted by a sheriff or deputy sheriff in a conspicuous place on each parcel of land included in said petition fourteen days at least before the return day of said citation.

Dated this fifth day of January, in the year eighteen hundred and ninety-nine.

LEONARD A. JONES,
Judge of the Court of Registration.

Recorder's Certificate of Service.

I hereby certify that I have served the foregoing citation by publishing the same, as directed by the court, and by mailing a duly attested copy thereof to every person named in said citation whose address is known, in accordance with the foregoing order.

CLARENCE C. SMITH, *Recorder.*

44 [Endorsed:] No. 21. David E. Gould *et al.*, petitioners. Citation, orders, and returns, dated January 5, 1899; returnable January 30, 1899. 438.

SUFFOLK, *ss:*

CHELSEA, *January 11th*, 1899.

By virtue of the foregoing order, I posted in a conspicuous place on each parcel of land included in the foregoing citation lying within the county of Suffolk a duly attested copy of said citation fourteen days at least before the return day thereof, to wit, on the tenth day of January, eighteen hundred and ninety-nine.

FRED H. SEAVEY,
Deputy Sheriff.

Posting	6.00
Copies	6.00
Travel	40
	12.40

MIDDLESEX, *ss:*

JANUARY 17TH, 1899.

By virtue of the foregoing order, I posted in a conspicuous place on each parcel of land included in the foregoing citation lying within the county of Middlesex a duly attested copy of said citation fourteen days at least before the return day thereof, to wit, on the sixteenth day of January, eighteen hundred and ninety-nine.

M. FRANK EASTMAN,
Deputy Sheriff.

Fees.

Copies	2.00
Posting	2.00
Travel	48
Horse & c.	60
	$5.08

In serving this precept it was necessary and I actually used a horse and carriage 5 miles.

M. F. EASTMAN,
Deputy Sheriff.

45 No. 9.

[SEAL.]

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Court of Registration.

In the matter of the petition of David E. Gould *et al.*, numbered 21, the said petitioners having requested that the line of the public ways mentioned therein as boundaries of the land therein described be determined—

It is ordered that notice of said petition be given by the recorder by mailing a registered letter to the mayor of the cities in which such land lies, and, if any of the ways are highways, to one of the

county commissioners of the county or counties in which the land lies.

Dated this seventh day of January, in the year 1899.

LEONARD A. JONES,
Judge of the Court of Registration.

I hereby certify that on Monday, the tenth day of January, in the year 1899, I served the notice required by the foregoing order by mailing a registered letter stating said applicants' request and naming the ways mentioned to Seth J. Littlefield, mayor of Chelsea; Arthur E. Hatch, mayor of Everett; Levi S. Gould, chairman of Middlesex county commissioners, and David F. Barry, president of the board of aldermen of the city of Boston, as chairman of the county commissioners of Suffolk county.

CLARENCE C. SMITH, *Recorder.*

46 [Endorsed:] No. 21. David E. Gould *et al.*, petitioners. Notice to mayor, selectman, or county commissioner of petition, dated January 7th, 1899.

47 No. 10.

[SEAL.]

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Court of Registration.

In the matter of the petition of David E. Gould *et al.*, numbered 21, it is hereby ordered that the recorder send forthwith a registered letter to the chairman of the board of aldermen of Chelsea, in said county, acting as county commissioners in said city, enclosing copy of the notice issued in said case, with a notice that petitioners ask to have the lines of certain ways determined, as stated in their petition.

Dated this seventeenth day of January, in the year 1899.

LEONARD A. JONES,
Judge of the Court of Registration.

I hereby certify that on Tuesday, the seventeenth day of January, in the year 1899, I served the notice required by the foregoing order by mailing a registered letter stating said applicants' request and enclosing a certified copy of the notice issued in the case to the chairman of the board of aldermen of the city of Chelsea, acting as county commissioners in said city.

CLARENCE C. SMITH, *Recorder.*

48 [Endorsed:] No. 21. David E. Gould *et al.*, petitioners. Notice to chairman of board of aldermen of Chelsea, acting as county commissioners in said city, dated January 17, 1899.

49 No. 11.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Court of Registration.

DAVID E. GOULD ET AL., Petitioners. No. 21.

And now come the petitioners and pray that they may be allowed to amend their petition by striking out their request to have the lines of the public ways shown on the plan filed with their petition adjudged and determined by the court to be as laid down on said plan, and further that they be allowed to strike out of their said petition the 12th described parcel of land, being sect. N on said plan.

DAVID E. GOULD.
GEORGE H. JONES.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

JANUARY 30, 1899.

Then personally appeared the above-named David E. Gould and George H. Jones, known to me to be the signers of the foregoing petition, and made oath that the statements made therein, so far as made of their own knowledge, are true, and so far as made upon information and belief that they believe them to be true.

Before me—

CLARENCE C. SMITH,
Justice of the Peace.

50 [Endorsed:] No. 21. David E. Gould *et al.*, petitioners. Motion for amendment. Motion allowed. Leonard A. Jones, judge. Court of registration. Filed Jan. 30, 1899, 10 o'clock 5 min. a. m.

51 No. 12.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Court of Registration.

DAVID E. GOULD ET AL., Petitioners. No. 21.

And now come the petitioners and move that a general default as to all parties defendant, whether named in the notice or not, who have not appeared or answered be entered, except as to any and all parties interested in the registration of section B, described in their petition, and that as to said section B further proceedings be continued to April 3d, 1899, at 10 a. m., to await the determination of the questions raised in the writ of prohibition against the judges of this court now pending in the supreme judicial court for said county of Suffolk and numbered 6415 on the court files, and that as to

l sections L, M, O, and P hearing on the registration of the same l all other questions before the court relating thereto or raised in ir said petition be continued to February 13th, 1899, at 10 o'clock the forenoon.

DAVID E. GOULD.
GEORGE H. JONES.

& 53 [Endorsed:] No. 21. David E. Gould *et al.*, petitioners. Motion for general default and continuance. Motion owed. Leonard A. Jones, judge. Court of registration. Filed Jan. 30, 1899, 10 o'clock 5 min. a. m.

[Endorsed:] No. 6415. Law. William B. Tyler, petitioner, *vs.* Judges of the Court of Registration. Certified pies from court of registration referred to in answer. Annex X.

& 56 WILLIAM B. TYLER, Petitioner,
v.
HE JUDGES OF THE COURT OF REGISTRATION, Respondents.

ANNEX Y.

Rules of the Court of Registration.

7 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court.

Whereas, by the land registration act, being chapter 562 of the cts of the Year 1898, it is provided that the court of registration shall from time to time make general rules and forms for procedure, conforming as near as may be to the practice in the probate ourts, but subject to the express provisions of this act and to general laws," and that "such rules and forms before taking effect shall e approved by the supreme judicial court or a justice thereof;" and hereas the court of registration has prepared certain general rules nd forms for procedure in said court, which are hereto annexed, and has submitted them to this court for approval, in accord-
8 ance with said statute; and whereas said rules and forms have been examined by the justices of this court:

It is thereupon ordered, that said rules and forms be approved, to ake effect and have force in the court of registration in this Commonwealth from and after the fourteenth day of October, A. D. ighteen hundred and ninety-eight.

WALBRIDGE A. FIELD.
OLIVER W. HOLMES.
JOHN LATHROP.
JOHN W. HAMMOND.

February 2, 1899.

59 COMMONWEALTH OF MASSACHUSETTS:

To the honorable the justices of the supreme judicial court:

The court of registration, being authorized to make rules for procedure therein, has prepared, approved, and herewith submits

the following rules, to the end that the same may be approved, altered, or amended by the supreme judicial court, and thereafter take effect and be in force throughout the Commonwealth.

LEONARD A. JONES,
CHARLES THORNTON DAVIS, *Judges.*

60 *Rules of the Court of Registration.*

I.

The land registration office shall be open from the hour of nine in the forenoon until four in the afternoon every day in the year, except on Sundays and holidays, and except that on Saturdays it shall be open only till one o'clock in the afternoon.

II.

The court shall be open each day at the hour of ten in the forenoon.

III.

Upon the entry of every petition for registration the name of the petitioner's attorney shall be entered in the recorder's docket.

IV.

A petitioner for registration upon filing his petition shall
61 deposit with the recorder or assistant recorder the sum of twenty-five dollars, and the further sum of one-tenth of one per cent. of the assessed value of the real estate on the basis of the last assessment for municipal taxation, to be applied to the fees and expenses payable under the land registration act. If any surplus remains after the requirements of said act are met, it shall be returned to the applicant. If such deposit be not sufficient to meet such requirements a further deposit shall be made upon request of the recorder.

The petitioner shall also, before a decree of confirmation and registration is entered, deposit with the recorder the further amount of one-tenth of one per cent. of such assessed value of the real estate, as an assurance fund in accordance with section 94 of said act.

V.

Any examiner of titles appointed under the land registration act
may examine titles assigned to him in any county. He may
62 appear and act as counsel for any petitioner for the registration of any title not referred to him for examination; but as to titles so referred to him he shall not act as counsel for any party other than the Commonwealth.

No attorney for any petitioner shall appear or act for or in behalf of any respondent or adverse claimant.

VI.

If a party shall change his attorney, pending any proceeding, the name of the new attorney shall be substituted on the docket for

that of the former attorney, and notice thereof given to any adverse party; and until such notice of the change of an attorney all notices given to or by the attorney first appointed shall be considered in all respects as notice to or from his client, except in cases in which by law the notice is required to be given to the party personally;
63 provided, however, that nothing in these rules shall be construed to prevent any party interested from appearing for himself in the manner provided by law; and in such case the party so appearing shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

VII.

In addition to making appointments of guardians *ad litem* in cases required by statute, whenever it shall appear that a minor is interested in any land in regard to which proceedings are pending, a guardian *ad litem* for such minor may be appointed by the court at its discretion, with or without notice.

VIII.

The court may grant commissions to take the depositions of witnesses without the Commonwealth; and any party may, on application to the recorder, obtain a commission, which shall be directed to any commissioner appointed by the governor of the Com-
64 monwealth to take depositions in any other of the United States, or the commission may be directed to any justice of the peace, notary public or other officer legally empowered to take depositions or affidavits in the State or country where the deposition is to be taken. In each case the deposition shall be taken upon interrogatories to be filed by the party applying for the commission and upon such cross-interrogatories as may be filed by the adverse party, or by the examiner of titles acting in the case, the whole of which interrogatories shall be annexed to the commission. The party applying for the commission shall in each case file his interrogatories in the recorder's office and give notice thereof to the adverse party, or his attorney, and to the examiner of titles, seven days at least before taking out the commission, and at least fourteen days before, if the party or his attorney live out of the Commonwealth. But where the adverse party does not appear, such
65 interrogatories need not be exhibited to him, nor notice be given to him of the same. And when a deposition shall be taken and certified by any person as a justice of the peace or other officer as aforesaid, by force of such commission, if it shall be objected that the person so taking and certifying the same was not such officer, the burden of proof shall be on the party so objecting; and, if a like objection shall be made to a deposition taken without such commission, it shall be incumbent on the party producing the deposition to prove that it was taken and certified by a person duly authorized.

IX.

In all cases where depositions shall be taken on interrogatories, no party shall be permitted to attend at the taking of such deposition, either himself, or by an attorney or agent; nor be permitted to communicate by interrogatories or suggestions with the deponent while giving his deposition. It shall be the duty of the
66 commissioner to take such deposition in a place separate and apart from all other persons, and to permit no person to be present during such examination except the deponent and himself, and such disinterested person, if any, as he may think fit to appoint as a clerk to assist him in reducing the deposition to writing. And it shall be the duty of the commissioner to put the several interrogatories and cross-interrogatories to the deponent in their order, and to take the answer of the deponent to each, fully and clearly, before proceeding to the next; and not to read to the deponent, nor permit the deponent to read, a succeeding interrogatory, until the answer to the preceding has been fully taken down; and it shall be the duty of the recorder, on issuing a commission to take a deposition on interrogatories, to insert the substance of this order therein; or to annex this order, or the substance thereof, to the commission, by the way of notice and instruction to the commissioner.

67 X.

All depositions shall be opened and filed by the recorder when received. The deposition shall afterwards be in his custody, subject to the order of the court, as other documents in the case; and if not read on the trial by the party taking it, it may be used by any other party, if he sees fit, he paying the costs of taking the same.

XI.

Whenever, in any case, a notice given in accordance with the land registration act, or the general forms of procedure, or otherwise, is held by the court to be insufficient, it may order such further notice as the case requires.

XII.

The court may in its discretion allow the parties to amend their pleadings, and order or permit pleadings to be filed, or any
68 proceeding to be had, at other times than are provided in these rules; and may in all cases impose just and reasonable terms upon the parties.

XIII.

When a default is entered in an action it shall not be stricken off after the day upon which it is entered, except upon notice to the adverse party, and upon an affidavit of merits in the defence, with a statement of its nature, and proof to the satisfaction of the court that a defence is in good faith intended.

XIV.

Motions may be heard by a judge in open court, or at chambers, as he shall appoint.

XV.

When any matter shall be referred to a master he shall assign a time and place for hearing, which shall be not less than ten days thereafter; and the party in whose behalf the reference is made shall serve the adverse party, at least seven days before the
69 time appointed for the hearing, with a summons, or such other notice as may be ordered by the court, requiring his attendance at such time and place, and make proof thereof to the master; and thereupon, if the party summoned shall not appear to show cause to the contrary, the master may proceed *ex parte;* and if the party obtaining the reference shall not appear at the time or place, or show cause why he does not, the master may proceed *ex parte.*

XVI.

When the master has prepared a draft copy of his report he shall notify the parties or their attorneys of a time and place when and where they may attend to hear the same, and suggest such alterations, if any, as they may think proper; upon consideration whereof the master will finally settle the draft of his report, and give notice thereof to the parties or their attorneys, whereupon, after ex-
70 amining the same, or being furnished with a copy thereof, if they so request, and pay the usual fees therefor, five days shall be allowed for bringing in written objections thereto, which objections, if any, shall be appended to the report. No exception to a master's report will be allowed without a special order of the court, unless founded upon an objection made before the master, and shown by his report, and unless filed with the recorder within fourteen days from the filing of the report. Notice of the filing of a master's report shall be forthwith sent by the recorder to each party or his attorney.

XVII.

When exceptions shall be taken to the report of a master, they shall be filed with the recorder, and notice thereof shall forthwith be given to the adverse party; and the exceptions shall then be set down for argument. In every case the exceptions shall briefly and clearly specify the matter excepted to, and the cause thereof;
71 and the exceptions shall not be valid as to any matter not so specified.

XVIII.

The date of the transcription of the decree into the registration book shall be taken to be the time at which the assistant recorder receives the certified copy of the decree for transcription; and he shall minute upon such copy and also in the registration book the day, hour and minute of its reception.

Every new certificate shall bear date as of the time of reception noted on the instrument of transfer.

XIX.

When a deed of conveyance of registered land is presented to the assistant recorder in the district where the land lies, such assistant recorder shall not receive the same or enter and issue a certificate of title of such land to the grantee unless, the grantor being unmarried or having no husband or wife to join, it contains a statement to that effect; or, if the grantor is married, unless the deed of conveyance, in case the registered owner is the husband, is also executed by his wife in release of dower and homestead in the granted premises; or, in case the registered owner is the wife, unless the deed is also executed by her husband in release of all interest in the granted premises.

72

The deed shall be received and a new certificate shall be entered and issued by an assistant recorder of the district in which the land lies, when a deed of transfer is executed as aforesaid and acknowledged in the manner now required in this Commonwealth for recording in the register of deeds by the registered owner, conveying in fee-simple the entire parcel of land registered under one certificate of title, and there is presented to such assistant recorder the registered owner's duplicate certificate; provided the land conveyed by such deed is described in the same terms as in the grantor's original certificate; and provided the grantor or grantors in such deed are the same as the registered owner or owners in such certificate.

73

If the land conveyed by such deed is not described in the same terms as in the certificate of title to such land, or the grantor or grantors in such deed are not the same as the registered owner or owners, the assistant recorder shall not receive the deed or issue a new certificate, but shall forthwith refer the matter to the court for its direction.

XX.

When the owner of registered land transfers a part of it, his transfer shall be accompanied by a plan, showing the land transferred, which shall be signed by such owner and by his grantee as correct.

The assistant recorder shall enter and issue a certificate for such part to the grantee, when the description of the land in the deed of transfer agrees with such plan; and shall enter and issue to the grantor a certificate of the remainder described as in the surrendered certificate, omitting the land transferred, the plan and certificate of which shall be referred to.

74

XXI.

When a lease has been noted upon the registration book and upon the owner's duplicate certificate as an incumbrance, and the lease has been determined by lapse of time, merger, surrender, re-

entry or otherwise, the assistant recorder may note its dertemination in the registration book and upon the owner's duplicate certificate, upon the surrender of the lessee's duplicate certificate, if such certificate has been issued; but if no such certificate has been issued, the assistant recorder shall note the determination of the lease only upon the written consent of the lessee, or order of court as hereinafter provided.

75 In case the lessee neglects or refuses to give his consent in writing to the entry of a memorandum of the determination of the lease, the owner of the registered land or any person interested in it may apply to the court of registration for an order directing the entry of such a memorandum, and upon notice of such application to the lessee and other persons interested, and the production of such evidence as shall satisfy the court that the lease has terminated, the court shall make such order.

XXII.

When an instrument executed by an attorney under letters of attorney duly acknowledged is filed or presented for registration, the attorney shall make and subscribe an oath before a justice of the peace, or other officer empowered to administer oaths, that the principal was alive at the date of the execution of the instrument, and that the power was then in force and not revoked.

76

XXIII.

A registered owner or mortgagee whose name has been changed since the entry of a certificate, either by decree of the probate court, by marriage, divorce or adoption, or whose name was by mistake wrongly expressed in the certificate, may, upon satisfying the court of the fact, surrender the duplicate certificate and take out a new one in his new or correct name; or a memorandum of such change or correction may by order of the court be entered on the certificate.

XXIV.

Two or more parcels of land may be included in one application provided they constitute one holding under one and the same title.

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(Here follows diagram marked page 83. Omitted in printing per stipulation.)

84&85 Whereupon, on the twenty-seventh day of said February, a hearing was had, and the question of the constitutionality of the statute of 1898, chapter 562, was reserved, at the request of parties, by the justice who presided at the hearing, for the determination of the full court, and the case reported to said court.

86&87 And now, on the third day of January, A. D. 1900, the parties appeared, and it is ordered by the supreme judicial court for the Commonwealth, by its rescript, as follows, viz:

88&89 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, January, 1900.

In the case of—

WILLIAM B. TYLER
vs.
JUDGES OF THE COURT OF REGISTRATION,

pending in the supreme judicial court for the county of Suffolk:

Ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Petition denied.

By the court:

HENRY A. CLAPP, *Clerk.*

January 3, 1900.

90-93 And thereupon, in accordance with said rescript, the following final decree is entered by our said court, to wit:

94 & 95 SUFFOLK, *ss*:

In the Supreme Judicial Court.

WILLIAM B. TYLER, Petitioner,
v.
THE JUDGES OF THE COURT OF REGISTRATION, Respondents.

This case having been reserved for the consideration of the full court, and the full court, after hearing the same, having decided that the provisions of the land registration act of this Commonwealth, in the petition mentioned and amendments thereof, whereby a decree of registration entered in pursuance of the said statutes is made conclusive upon and against all persons as therein provided, are valid and not repugnant to the Constitution of the United States or to the constitution of this Commonwealth, and having decided that the said statutes do not give to the recorder and assistant recorders therein mentioned judicial powers contrary to the constitution of this Commonwealth, and having decided that the provisions of the said statutes relating to transfers and dealings with registered land after original registration are valid and not repugnant to the Constitution of the United States or the constitution of this Commonwealth, now, in pursuance of the said decision and upon hearing counsel for the parties, it is ordered and decreed that the prayer of the petition for a writ of prohibition be denied, and that the petition do stand dismissed out of this court.

By the court:

JOHN NOBLE, *Clerk.*

February 9, 1900.

96 & 97 All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have hereunto caused the seal of our said court to be hereto affixed.

Witness Oliver Wendell Holmes, Esquire, chief justice of our said supreme judicial court, at Boston, in said county, this twentieth day of February, in the year of our Lord nineteen hundred.

[SEAL.] JOHN NOBLE, *Clerk.*

98 & 99 In the Supreme Court of the United States.

Between—

WILLIAM B. TYLER, Petitioner, Plaintiff in Error,
and
THE JUDGES OF THE COURT OF REGISTRATION, Respondents, Defendants in Error.

Assignment of Errors.

And the said William B. Tyler says that in the record and proceedings aforesaid and in making the decree aforesaid there is manifest error in this, to wit:

1. That by the record aforesaid it appears that it was decided in and by the said decree that the provisions of the land registration act therein mentioned and amendments thereof, whereby a decree of registration is made conclusive upon and against all persons as therein provided, were valid and not repugnant to the Constitution of the United States, whereas it ought to have been decided that the said provisions were not valid and were repugnant to the provision of the said Constitution that no State shall de-
100 & 101 prive any person of property without due process of law.

2. There is also manifest error in this, to wit, that by the record aforesaid it appears that it was decided in and by the said decree that the provisions of the said statutes relating to transfers and dealings with registered land after original registration were valid and repugnant to the Constitution of the United States, whereas it ought to have been decided that the said provisions were not valid and were repugnant to the provision above mentioned of the said Constitution.

3. There is also manifest error in this, to wit, that by the record aforesaid it appears that the prayer of the petition therein mentioned for a writ of prohibition was denied by the said decree, whereas a writ of prohibition ought to have been thereby granted as in the said petition prayed.

And the said William B. Tyler prays that the said decree for the errors aforesaid and others in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said decree.

J. L. THORNDIKE,
Counsel for the Plaintiff in Error.

102 & 103 COMMONWEALTH OF MASSACHUSETTS, *Suffolk County.*

Supreme Judicial Court.

WILLIAM B. TYLER, Petitioner,
v.
THE JUDGES OF THE COURT OF REGISTRATION, Respondents.

Reservation.

This case came on to be heard before me. The only question raised at the hearing was whether St. 1898, c. 562, was constitutional. This question I reserve for the determination of the full court, and report the case, by request of the parties, upon the petition and answer, together with the rules of the court of registration and the set of certified documents referred to in the answer and made part of the case. The parties have agreed that at the argument there may be furnished to the court pamphlet copies of said

act, and such blank forms for procedure made by the said court registration and approved by this court, as any party may des

JOHN W. HAMMOND, *J. S. J.*

104 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *January* 10, 190

I certify the annexed to be a true copy of the opinion of the preme judicial court in the case of Tyler *vs.* Judges of Court Registration decided on the 3rd day of January, 1900.

GEO. F. TUCKER,
Reporter of Decisions

105 & 106 TYLER
vs.
JUDGES OF THE COURT OF REGISTRATION.

HOLMES, *C. J.:*

This is a petition for a writ of prohibition against the judges the court of registration established by St. 1898, c. 562, and is brou to prevent their proceeding upon an application concerning la in which the petitioner claims an interest. The ground of the p tion is that the act establishing the court is unconstitutional. T reasons are urged against the act, both of which are thought to go the root of the statute and to make action under it impossible. T first and most important is that the original registration depri all persons except the registered owner of any interest in the la without due process of law. There is no dispute that the object the system, expressed in s. 38, is that the decree of registrat "shall bind the land and quiet the title thereto," and "shall conclusive upon and against all persons," whether named in t proceedings or not, subject to few and immaterial exceptions; a this being admitted, it is objected that there is no sufficient proc against or notice to persons having adverse claims in a proceedi intended to bar their possible rights.

The application for registration is to be in writing and sign and sworn to. It is to contain an accurate description of the la to set forth clearly other outstanding estates or interests known the petitioner, to identify the deed by which he obtained title, state the name and address of the occupant, if there is one, and a to give the names and addresses, so far as known, of the occupa of all lands adjoining. S. 21. As soon as it is filed a memorandu containing a copy of the description of the land concerned is to filed in the registry of deeds. S. 20. The case is immediately ferred to an examiner (appointed by the judge, s. 12), who mak as full an investigation as he can and reports to the court. S. If in the opinion of the examiner the applicant has a good title, alleged, or if the applicant after an adverse opinion elects to proce

107 & 108 further, the recorder is to publish a notice by order of t court in some newspaper published in the district wh any portion of the land lies. This notice is to be

dressed by name to all persons known to have an adverse interest, and to the adjoining owners and occupants so far as known, and to all whom it may concern. It is to contain a description of the land, the name of the applicant, and the time and place of the hearing. S. 31. A copy is to be mailed to every person named in the notice whose address is known, and a duly attested copy is to be posted in a conspicuous place on each parcel of land included in the application by a sheriff or deputy sheriff fourteen days at least before the return day. Further notice may be ordered by the court. S. 32. It will be seen that the notice is required to name all persons known to have an adverse interest, and this of course includes any adverse claim, whether admitted or denied, that may have been discovered by the examiner or in any way found to exist. Taking this into account, we should construe the requirement in s. 21 concerning the application as calling upon the applicant to mention, not merely outstanding interests which he admits, but equally all claims of interest set up, although denied by him. We mention this here to dispose of an objection of detail urged by the petitioner, and we pass to the general objection that, however construed, the mode of notice does not satisfy the constitution, either as to persons residing within the State upon whom it is not served or as to persons residing out of the State and not named.

If it does not satisfy the constitution, a judicial proceeding to clear titles against all the world hardly is possible, for the very meaning of such a proceeding is to get rid of unknown as well as known claims; indeed certainty against the unknown may be said to be its chief end, and unknown claims cannot be dealt with by personal service upon the claimant. It seems to have been the impression of the supreme court of Ohio in the case most relied upon by the petitioner that such a judicial proceeding is impossible in this country. State *v.* Gilbert, 56 Ohio St., 575, 629. But we cannot bring ourselves to doubt that the constitutions
109 & 110 of the United States and of Massachusetts at least permit it as fully as did the common law. Prescription or a statute of limitations may give a title good against the world and destroy all manner of outstanding claims without any notice or judicial proceeding at all. Time and the chance which it gives the owner to find out that he is in danger of losing rights are due process of law in that case. Wheeler *v.* Jackson, 137 U. S., 245, 258. The same result used to follow upon proceedings which, looked at apart from history, may be regarded as standing half way between statutes of limitations and true judgments *in rem*, and which took much less trouble about giving notice than the statute before us. We refer to the effect of a judgment on a writ of right after the mise joined and the lapse of a year and a day—Booth, Real Actions, 101, *in margine*; Fitz. Abr. Continual Claim, pl. 7, *Faux Recovere*, pl. 1; y. B., 5 Ed. III., 51, pl. 60—and of a fine with proclamations after the same time or by a later statute after five years. 2 Bl. Comm., 354; 2 Inst., 510, 518; St. 18 Ed. I., *modus levandi fines*; 34 Ed. III, c. 16; 4 Hen. VII, c. 24; 32 Hen. VIII, c. 36. It would have astonished John Adams to be told that the framers of our Con-

stitution had put an end to the possibility of these ancient institutions. A somewhat similar statutory contrivance of modern days has been held good. Turner *v.* New York, 168 U. S., 90. Finally, as was pointed out by the counsel for the petitioners, a proceeding *in rem* in the proper sense of the word might give a clear title without other notice than a seizure of the *res* and an exhibition of the warrant to those in charge. 2 Browne, Civ. & Adm. Law, 398. The general requirement of advertisement in admiralty cases is said to be due to rules of court. U. S. Adm. Rule 9; Betts, Adm. Practice (1838), 33, 34, App. 14.

The prohibition in the fourteenth amendment against a State depriving any person of his property without due process of law and that in the twelfth article of the Massachusetts bill of rights refer to somewhat vaguely determined criteria of justification which may be found in ancient practice—Murray *v.* Hoboken
111 & 112 Land Co., 18 How., 272, 277—or which may be found in convenience and substantial justice, although the form is new. Hurtado *v.* California, 110 U. S., 516, 528, 531—Holden *v.* Hardy, 169 U. S., 366, 388, 389. The prohibitions must be taken largely with a regard to substance rather than to form, or they are likely to do more harm than good. It is not enough to show a procedure to be unconstitutional to say that we never have heard of it before. Hurtado *v.* California, 110 U. S., 516, 537.

Looked at either from the point of view of history or of the necessary requirements of justice, a proceeding *in rem* dealing with a tangible *res* may be instituted and carried to judgment, without personal service upon claimants within the State or notice by name to those outside of it, and not encounter any provision of either constitution. Jurisdiction is secured by the power of the court over the *res*. As we have said, such a proceeding would be impossible were this not so, for it hardly would do to make a distinction between the constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all. Pennoyer *v.* Neff, 95 U. S., 714, 727; The Mary, 9 Cranch, 126, 144; Mankin *v.* Chandler, 2 Brock, 125, 127; Brown *v.* Levee Commissioners, 50 Miss., 468, 481. 2 Freeman, Judgments, 4th ed., ss. 606, 611. In Hamilton *v.* Brown, 161 U. S., 256, a judgment of escheat was held conclusive upon persons notified only by advertisement to all persons interested. It is true that the statute under consideration required the petition to name all known claimants and personal service to be made on those so named. But that did the plaintiffs no good, as they were not named. So a decree allowing or disallowing a will binds everybody, although the only notice of the proceedings given be a general notice to all persons interested. And in this case, as in that of escheat just cited, the conclusive effect of the decree is not put upon the ground that the State has an absolute power to determine the persons to whom a man's property shall go at his death, but upon the characteristics of a
113 & 114 proceeding *in rem*. Bonnemort *vs.* Gill, 167 Mass., 338, 340. See 161 U. S., 263, 274. Admiralty proceed-

gs need only to be mentioned in this connection, and further
ation of cases seems unnecessary.

Speaking for myself, I see no reason why what we have said as to
oceedings *in rem* in general should not apply to such proceedings
ncerning land. In Arnold *v.* Griggs, 134 U. S., 316, 327, it is said
be established that "a State has power by statute to provide for
e adjudication of titles to real estate within its limits as against
n-residents who are brought into court only by publication." In
amilton *v.* Brown, 161 U. S., 256, 274, it was declared to be within
e power of a State "to provide for determining and quieting the
le to real estate within the limits of the State and within the juris-
ction of the court after actual notice to all known claimants
d notice by publication to all other persons." I doubt whether
e court will not take the further step when necessary and declare
e power of the States to do the same thing after notice by publi-
tion alone. See Huling *v.* Kaw Valley Railway & Improvement
., 130 U. S., 559, 564; Parker *v.* Overman, 18 How., 137, 140, 141.
ut in the present case provision is made for notice to all known
aimants by the recorder, who is to mail a copy of the published
otice to every person named therein whose address is known.
32. We shall state in a moment our reasons for thinking this
rm of notice constitutional. See, further, Cook *v.* Allen, 2 Mass.,
2, 469, 470; Dascomb *v.* Davis, 5 Met., 335, 340; Brock *v.* Old
olony Railroad, 146 Mass., 194, 195.

But it is said that this is not a proceeding *in rem*. It is certain
at no phrase has been more misused. In the past it has had little
ore significance than that the right alleged to have been vio-
ted was a right *in rem*. Austin thinks it necessary to quote
eibnitz for the sufficiently obvious remark that every right to
estitution is a right *in personam*. So as to actions. If the tech-
ical object of the suit is to establish a claim against some par-
cular person, with a judgment which generally in theory at
least binds his body, or to bar some individual
15 & 116 claim or objection, so that only certain persons are en-
titled to be heard in defence, the action is *in personam*,
lthough it may concern the right to or possession of a tangible
hing. Mankin *v.* Chandler, 2 Brock., 125, 127. If, on the other
and, the object is to bar indifferently all who might be minded to
ake an objection of any sort against the right sought to be estab-
shed, and if any one in the world has a right to be heard on the
trength of alleging facts which, if true, show an inconsistent inter-
st, the proceeding is *in rem*. 2 Freeman, Judgments, 4th ed., s.
06, *ad fin.* All proceedings, like all rights, are really against per-
ons. Whether they are proceedings or rights *in rem* depends on
he number of persons affected. Hence the *res* need not be person-
fied and made a party defendant, as happens with the ship in the
dmiralty; it need not even be a tangible thing at all, as sufficiently
ppears by the case of the probate of wills. Personification and
aming the *res* as defendant are mere symbols, not the essential
natter. They are fictions, conveniently expressing the nature of
he process and the result; nothing more.

It is true as a historical fact that these symbols are used in admiralty proceedings, and also, again merely as a historical fact, that proceedings *in rem* have been confined to cases where certain classes of claims, although of very divers sorts, for indemnification, for injury, for wages, for salvage, &c., are to be asserted. But a ship is not a person. It cannot do a wrong or make a contract. To say that a ship has committed a tort is merely a shorthand way of saying that you have decided to deal with it as if it had committed one because some man has committed one in fact. There is no *a priori* reason why any other claim should not be enforced in the same way. If a claim for a wrong committed by a master may be enforced against all interests in the vessel, there is no juridical objection to a claim of title being enforced in the same way. The fact that it is not so enforced under existing practice affords no test of the powers of the legislature. The contrary view
117 & 118 would indicate that you really believed the fiction that a vessel had an independent personality as a fact behind the law. Furthermore, naming the *res* as defendant, although a convenient way of indicating that the proceeding is against property alone—that is to say, that it is not to establish an infinite personal liability—is not of the essence. If in fact the proceeding is of that sort and is to bar all the world, it is a proceeding *in rem*.

So as to seizure of the *res*. It is convenient in the case of a vessel in order to secure its being on hand to abide judgment, although in the case of a suit against a man jurisdiction is regarded as established by service without the need of keeping him in prison to await judgment. It is enough that the personal service shows that he could have been seized and imprisoned. Seizure, to be sure, is said to be notice to the owner. Scott *v.* Shearman, 2 W. Bl., 977, 979; Mankin *v.* Chandler, 2 Brock., 125, 127. But fastening the process or a copy to the mast would seem not necessarily to depend for its effect upon the continued custody of the vessel by the marshal. However this may be, when we come to deal with immovables there would be no sense whatever in declaring seizure to be a constitutional condition of the power of the legislature to make a proceeding against land a proceeding *in rem*. Hamilton *v.* Brown, 161 U. S., 256, 274. The land cannot escape from the jurisdiction, and except as security against escape seizure is a mere form, of no especial sanctity, and of much possible inconvenience.

I do not wish to ignore the fact that seizure when it means real dispossession is another security for actual notice. But when it is considered how purely formal such an act may be, and that even adverse possession is possible without ever coming to the knowledge of a reasonably alert owner, I cannot think that the presence or absence of the form makes a constitutional difference, or rather, to express my view still more cautiously, I cannot but think that the immediate recording of the claim is entitled to equal effect from a constitutional point of view. I am free to confess, however, that with the rest of my brethren I think the act ought to be amended in the direction of still further precautions to secure
119 & 120 actual notice before a decree is entered, and that if it is not amended the judges of the court ought to do all

at is in their power to satisfy themselves that there has been no
lure in this regard before they admit a title to registration.
The quotations which we have made show the intent of the stat-
e to bind the land and to make the proceedings adverse to all the
orld, even if it were not stated in s. 35 or if the amendment of
99 did not expressly provide that they should be proceedings *in*
n. St. 1899, c. 133, s. 1. Notice is to be posted on the land just
admiralty process is fixed to the mast. Any person claiming an
terest may appear and be heard. S. 34.
But perhaps the classification of the proceeding is not so impor-
nt as the course of the discussion thus far might seem to imply.
have pursued that course as one which is satisfactory to my own
ind, but for the purposes of decision a majority of the court prefer
assume that in cases in which under the constitutional require-
ents of due process of law it heretofore has been necessary to give
parties interested actual notice of the pending proceeding by
rsonal service or its equivalent in order to render valid judgment
gainst them, it is not in the power of the legislature, by changing
e form of the proceeding from an action *in personam* to a suit *in*
m, to avoid the necessity of giving such a notice, and to assume
at under this statute personal rights in property are so involved
d may be so affected that effectual notice and an opportunity to
e heard should be given to all claimants who are known or who
y reasonable effort can be ascertained.
It hardly would be denied that the statute takes great precau-
ons to discover outstanding claims, as we already have shown in
etail, or that notice by publication is sufficient with regard to claim-
nts outside the State. With regard to claimants living within the
State and remaining undiscovered, notice by publication
21 & 122 must suffice of necessity. As to claimants living within
the State and known, the question seems to come down to
hether we can say that there is a constitutional difference between
ending notice of a suit by a messenger and sending it by the post-
ffice and beside publishing in a newspaper, recording in the regis-
ry, and posting on the land. It must be remembered that there is
o constitutional requirement that the summons, even in a personal
ction, shall be served by an officer, or that the copy served shall be
fficially attested. Apart from local practice, it may be served by
ny indifferent person. It may be served on residents by leaving a
opy at the last and usual place of abode. When we are consider-
ng a proceeding of this kind it seems to us within the power of the
egislature to say that the mail as it is managed in Massachusetts is
sufficient messenger to convey the notice when other means of
otifying the party like publishing and posting also are requisite.
We agree that such an act as this is not to be upheld without anxiety.
But the difference in degree between the case at bar and one in
hich the constitutionality of the act would be unquestionable seems
o us too small to warrant a distinction. If the statute is within
he power of the legislature, it is not for us to criticise the wisdom
r expediency of what the legislature has done.
We do not think it necessary to refer to the elaborate collection

of statutes presented by the Attorney General for the purpose of showing that the principal of the present act is old. Although no question is made on that point, we may mention that an appeal is given to the superior court with the right to claim a jury. In our opinion the main objection to the act fails. See Sheperd *v.* Ware, 46 Minn., 174; People *v.* Simon, 176 Ill., 165; Short *v.* Caldwell, 155 Mass., 57, 59; Loring *v.* Hildreth, 170 Mass., 328.

The other objection to the constitutionality of the statute is with regard to the powers and duties of the recorder and assistant recorder. It is said that they are given judicial powers after the original registration, although not judicial officers under the
123 & 124 Constitution. The act of registration is the operative act to convey title, s. 50, and by the act of 1898 the assistant recorder does it unless in doubt. SS. 53, 55, 57, 58, 61, 62, 63. It is said that as his decision affects title it must be judicial. But here again it is necessary to use a certain largeness in interpreting broad constitutional provisions. The ordinary business of registration is very nearly ministerial. There is no question to be raised or which can be raised. If there is a question, either raised by any party in interest or occurring to the assistant recorder, it is to be referred to the judge for decision. S. 53. But whatever may be thought of the original act, by amendment even the ordinary business is to be done only "in accordance with the rules and instructions of the court." St. 1899, c. 131, s. 8. Under this amendment registration is the act of the court. The fact that it may be done by the assistant recorder under general orders when there is no question is not different from the power of the clerk to enter a judgment in cases ripe for judgment under a general order or ruling of the superior court. It should be observed that by s. 55 the production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, is conclusive authority from the registered owner for the entry of a new certificate or the making of a memorandum of registration, and that a registration procured by presenting a forged certificate, &c., is void.

Finally, it is said that there is no provision for notice before registration of transfers or dealings subsequent to the original registration. It must be remembered that at all later stages no one can have a claim which does not appear on the face of the registry. The only rights are registered rights, and when land is brought into the registry system there seems to be nothing to hinder the legislature from fixing the conditions upon which it shall be held under that system. People *v.* Simon, 176 Ill., 165, 176. By s. 45 the obtaining of a decree of registration, which is a voluntary act, is an agreement running with the land that the land shall be and remain registered land and subject to the provisions of the act.
125 & 126 Furthermore, in deciding whether substantial justice is done it is to be borne in mind that ordinary cases will present no question at all. It is contemplated, as we have said, that if there is a question to be discerned it shall be referred to the court, and of course that the court will order notice to any party interested. The act shows throughout the intent that no one shall

be concluded without having a chance to be heard, and, although some of its methods are new to this Commonwealth, we cannot say that the precautions as to notice are insufficient in substance or form.

Petition denied.

127 & 128 TYLER
v.
JUDGES OF THE COURT OF REGISTRATION.

LORING, *J.*:

I dissent from the opinion of the majority of the court and think it proper to state the reasons which have brought me to the opposite conclusion.

It will be necessary to add to the statement of the general scope of the act, which is given in the opinion, by setting forth with some particularity those provisions which, in the opinion of the majority of the court, sufficiently secure to those having adverse interests that opportunity to be heard in defence of their rights of property which is guaranteed to them by the constitutional provisions, that they shall not be deprived of their property except by due process of law or the law of the land. Fourteenth amendment of the Constitution of the United States; Massachusetts declaration of rights, art. XII.

By ss. 31 and 32 notice of the application is to be issued by the court in a form specified in the act addressed to all known persons who claim an adverse interest and "to all whom it may concern," and the return day of the notice is to be not less than twenty nor more than sixty days from the date of the notice.

This notice is to be served (1) by publication "in some newspaper published in the district where any portion of the land lies" (s. 31), (2) by posting it "in a conspicuous place on each parcel of" the land in question fourteen days before the return day (s. 32), and (3) by mailing a copy "to every person named therein whose address is known" within one week after publication in the newspaper. The posting of the notice is to be performed by a sheriff or his deputy (s. 32), the publication and mailing by the recorder of the court (ss. 31, 32), and the return of the former and the affidavit of the latter are made by s. 32 "conclusive proof of such service."

It is provided that by the description in the notice "to all whom it may concern" "all the world are made parties defendant and shall be concluded by the default and order" (s. 35) which, by the terms of s. 36, "shall first be entered against all per-
129 & 130 sons who do not appear and answer" on the return day.

Thirty days are allowed for an appeal from a decree in favor of the applicant (s. 14), and on the expiration of that time by the express provisions of s. 38 the decree confirming and registering the applicant's title "shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law or in equity for reversing judgments or de-

crees," except only in case the decree was procured by the fraud of the applicant and rights of innocent third persons have not intervened (s. 38).

The peculiarities of the act consist, first, in the fact that it bars or may bar the true owner by a decree in a proceeding had in his absence of which he did not in fact have notice, and to which he is not named as a party; second, the notice to be given to those who are named therein is inappropriate and inadequate to bring home to them knowledge of the proceeding and enable them to appear and defend their right; third, the return and affidavit of service by the sheriff and the recorder cannot be shown to be either false or incorrect; fourth, the decree made in that proceeding, unlike any other judgment or decree known to the law, is final and not subject to be attacked directly or collaterally, even if made in the absence of the true owner and without the true owner having in fact received any notice of the proceeding.

The chief justice upholds the statute upon the ground that the proceeding is a proceeding *in rem*. If it be such a proceeding it is true that no person need be named as party respondent, and no notice beyond publication need be given. But some of the other justices who concur in the opinion prefer to uphold the statute upon the ground that the opportunity to appear and be heard afforded by the notice here provided is not so far different from that afforded by personal service or its equivalent in an action *in personam* as to forbid the legislature adopting it. On what ground the majority who deny that this is a proceeding *in rem* place their conclusion that those not named as respondents either in the
131 & 132 application or in the notice are barred is not explicitly stated.

I will deal first with the question of the notice to be given to known respondents—that is, to those named in the notice issued by the court. It is patent that one having an adverse interest is not sure to receive notice of the proceeding and to receive that notice in time to be heard. He may not see the notice posted on his own land—the parcel of land may be, for example, woodland and many thousand acres in extent—or the owner may be properly absent from the county for the fourteen days in question, or he may have given possession of the land to a tenant, and therefore properly leave it unvisited, or he may be a remainderman and have no immediate right of entry and certainly no likelihood of seeing a notice posted on the land; again, his interest in the land may be a right of way over or of light and air in the land of his neighbor, or an easement in the nature of an equitable restriction upon the height or position of buildings to be erected and maintained thereupon. In that case the notice would be posted on his neighbor's land, and there is certainly no likelihood that he would see a notice posted there. One publication in one newspaper in the district where the land lies, to be made "immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be," satisfies the statute, and nothing but the statement of that fact is necessary to show that such service of the notice is not certain to reach

all named respondents. The service by mail may be made at any time within seven days after publication in the newspaper. The mail is a good messenger to carry a communication to one whose identity and exact address are known, as is the case where one writes to another with whom he is in regular correspondence, but it is not a good messenger to use in conveying notice to strangers whose identity and address are not necessarily known and must be ascertained *pro hac vice*. This is recognized in the act when it provides that the notice is to be mailed, not to all respondents named in the notice, but to "every person named therein whose address is known." S. 32. Had the provisions required the notice to be mailed to every one named, the practical result would probably have been the same, for the recorder has no means of knowing the identity and proper address of each respondent, and the provision that the affidavit of the recorder in the matter of mailing copies of the notice shall be conclusive takes away from the applicant any temptation to use extraordinary diligence in furnishing to the recorder the exact name and address of those whose interest it will be, if brought in, to defeat the object which he seeks to obtain by bringing his application.

133 & 134

More than that, the mail was originally devised as a means of transmitting messages in business and social life, and not of serving notices of proceedings which may divest one of his property, and it has heretofore been treated as such by the public. A man not in business may reasonably absent himself from the Commonwealth in travelling for pleasure, and direct that all communications addressed to him shall be forwarded to him at specified places where he expects to go, but where he later decides that it is not his pleasure to go. It is probably within the experience of every one that many letters so forwarded are never received.

But the decisive objection to the provisions of the act as to notice to named respondents lies deeper than considerations of this nature alone. It does not depend upon the question whether service by mail is as likely to reach the respondent as service at the defendant's last and usual place of abode, as the opinion would seem to assume.

Each and every statute of Massachusetts, whether passed in the time of the colony, the province, or the Commonwealth, authorizing a judgment on default, based on any but personal service, has given to the defendant, who did not in fact have notice of the proceedings, and therefore no opportunity to be heard before the judgment was rendered, a right to have the judgment vacated on a writ of review. "Such judgments in this State are treated as valid until reversed, for the reason that the parties have an adequate remedy by review or writ of error." Wells, J., in Salem *v.* Eastern Railroad, 98 Mass., 431, 448.

135 & 136

It is definitely settled in other connections that a right of appeal or a right to a review is sufficient to render constitutional a judgment, which, but for the right to that appeal or review, would be void, as not securing to the defendant the rights guaranteed to him by the

Constitution. Jones *v.* Robbins, 8 Gray, 329; Holmes *v.* Hunt, 1
Mass., 505, 516; Foster *v.* Morse, 132 Mass., 354.

The first statute in Massachusetts authorizing a judgment on
fault on any but personal service was the colony act of 1644. Th
act provided that in case property of the defendant was attach
the notice, or, as it is now termed, the separate summons, might
served upon the defendant by leaving the same "at his house
place of usual abode," with a proviso that if the defendant was
the time of service, out of the jurisdiction the case should be c
tinued for a term before execution issued, and no execution sho
then issue until the plaintiff gave security to respond to the defe
ant "if he shall reverse the judgment within one year or su
further time as the court shall permit." Ancient Charters, p.
It is a fact of some interest that this is the origin in this Co
monwealth of writs of review, and in this connection it is of
little importance that the origin of writs of review was to give
defendants who, being served under the statute and being abs
from the colony at the time of service, did not know of the proce
ings an opportunity to have the judgment made in their abse
vacated if they had a good defense to the original claim.

This provision was re-enacted in 1700–1 without substant
change, and was then extended to writs of dower and *scire fac*
It was then provided in the interest of the absent defendant t
"no real estate taken in execution granted upon such first judgm
shall be alienated or passed away until after the expi
137 & 138 tion of the said twelve months, or after a new tr
brought within the said space of twelve months, to
intent that restitution thereof may be made in case as aforesai
1 Prov. Laws, pp. 447, 448.

In 1726 the provisions of the original act were extended to
service of a capias when no attachment was made, and in 1797
writs of ejectment, error, review, to real actions, and generally to
civil actions "wherein the law does not require a separate summ
to be left with the defendant." St. 1797, c. 50, ss. 1–5. The provisi
of this act have since been re-enacted without substantial cha
until this day. Rev. Sts., c. 90, ss. 41, 45, 48; c. 92, ss. 3, 4, 6, 8;
99, s. 17; Gen. Sts., c. 123, ss. 25, 28; c. 126, ss. 6, 7, 8, 10; c. 146
20; Pub. Sts., c. 161, ss. 31, 34; c. 164, ss. 6, 8, 10; c. 187, s. 21.

This right of review has been previously extended to judgme
rendered by justices of the peace and all inferior courts. St. 17
c. 17, s. 3; re-enacted in Rev. Sts., c. 99, s. 27; Gen. Sts., c. 146
24. Pub. Sts., c. 187, s. 25.

In 1820 the right to review a judgment was enlarged by givi
the court power to issue a writ of review, even if the defendant
within the Commonwealth at the time of service at his last a
usual place of abode, provided he did not in fact have notice of
action and applied for a review within a year after he first heard
it. St. 1820, c. 53; James *v.* Townsend, 104 Mass., 367. This
was re-enacted in Rev. Sts., c. 92, s. 5; c. 99, ss. 18–20; Gen. Sts.
146, s. 21; Pub. Sts., c. 187, s. 22.

The Revised Statutes made a further provision in protection of

rights of a defendant in a real action who had not been personally served and against whom judgment had been rendered on a default in his absence, to wit, that if the judgment were reversed within a year the land should be restored. Rev. Sts., c. 92, s. 9.

Without going more particularly into the statutes, it is enough to say that it has always been held in this Commonwealth that a judgment rendered on a default is binding on the de-
139 & 140 fendant when service was made upon him personally. Matthews *v.* Moulton, 135 Mass., 122. But if service was made at his last place of abode or in any way other than by personal service, and he did not in fact have notice of the proceeding, it is not binding upon him; if provision for reopening the judgment is made by review or writ of error, his remedy is to have the judgment vacated by such a proceeding instituted directly for that purpose. Hendrick *v.* Whittemore, 105 Mass., 23; Finneran *v.* Leonard, 7 Allen, 54. If, however, the proceeding is not according to common law, so that error does not lie, the judgment may be attacked collaterally and shown to be void for want of notice when invoked against the defendant. Smith *v.* Rice, 11 Mass., 514; Cook *v.* Darling, 18 Pick., 393. Or if a judgment is rendered in another State against a citizen of this State, or in this State against the citizen of another State, it may be so attacked collaterally when suit is brought on it, because to compel him to have the judgment vacated by writ of error, in which he must file a bond if he would obtain a stay of execution, is to impose a burden not warranted by the fourteenth amendment to the Constitution of the United States. Needham *v.* Thayer, 147 Mass., 536. And on this point generally see the exhaustive opinion of Judge Wells in Salem *v.* Eastern Railroad, 98 Mass., 431.

This doctrine that a defendant is not bound by a judgment rendered on default in his absence, based on a service other than personal service, is not peculiar to Massachusetts, but is of universal application; there is a difference in some States as to the remedy. In some jurisdictions the judgment will not be vacated if the defendant failed to receive notice through a false return of the sheriff, or an unauthorized appearance was made by an attorney, unless a suit on the sheriff's bond or a suit against the attorney fails, in fact, to give him an adequate remedy. Walker *v.* Robbins, 14 How., 584. In Connecticut a bill in equity lies to enjoin the enforcement of a judgment so obtained, though no fraud can be imputed to the plaintiff if the time prescribed by statute for vacating the judgment has expired. Jeffery *v.* Fitch, 46 Conn., 601. In New York it has been held that even after the time prescribed by statute for vacating such a judgment has expired, the court has inherent power to set it aside
if made in the absence of the defendant. Vilas *v.* Platts-
141 & 142 burgh Railroad, 123 N. Y., 440. And there are cases in the Supreme Court of the United States and in this Commonwealth indicating that judgments may be vacated after the term by exercise of the court's inherent power independently of statute. *Ex parte* Arnshaw, 15 Pet., 119; Warren *v.* Stickney, 12

Allen, 1; Gale *v.* Nickerson, 144 Mass., 415; Stickney *v.* Davis, 17 Pick., 169.

But these cases all agree in this, that the judgment is not binding, certainly in the absence of an adequate remedy, against the sheriff or the attorney who wrongfully appeared, and differ only as to what the remedy is; to that effect see Freeman on Judgments, s. 98, where many cases are collected.

It comes, therefore, to this: Whatever service other than personal service has been heretofore allowed, a judgment rendered in the absence of the defendant so served has never been held to be final—that is, not subject to be directly reviewed or collaterally attacked—but it has always been held that a defendant is entitled to escape from such a judgment in some way, either by a proceeding instituted directly to vacate it or by attacking it collaterally when it is sought to be enforced against him. In other words, it has always been held that he shall have an opportunity to be heard after the judgment on the merits of the original claim, if he did not in fact have an opportunity to be heard before the judgment was rendered.

The state of the common law in this connection at the time when the first settlers came to this country confirms this conclusion. At that time no such thing was known as a judgment against a defendant before he entered an appearance in court, even if he had been personally served with process. Salem *v.* Eastern Railroad, 98 Mass., 431, 451; James *v.* Townsend, 104 Mass., 367, 372; Storey, J., in Picquet *v.* Swan, 5 Mason, 35, 48. At common law, if the defendant failed to obey the summons served on him, whether by personal service or by service at his house, or in real actions by posting notice on his land, the plaintiff's remedy was, where the injury was not accompanied by force, to take out a writ of *distringas*, or writs of judgment or *pone*, followed by writs of *distringas*, under which the property of the defendant was distrained to compel his appearance in court, and when all his property had been distrained for that purpose the power of the court was exhausted; in those cases where the injury was accompanied by force the remedy of the plaintiff was to take out a capias under which the defendant might be arrested; and if he secreted himself so that he could not be taken a series of writs could be taken out which resulted in his being declared an outlaw, at which point the power of the court was at an end. 3 Bl. Com., 279, 287. 143 & 144 It was not until 1725 and by force of St. 12, George 1, c. 29, that judgment at law could be taken by default for non-appearance of the defendant; it is of interest to note that personal service of the writ was required by St. 12, Geo. I, c. 29, to enable the plaintiff to take judgment by default.

It appears that at that time courts of equity did enter a decree taking the bill *pro confesso;* but this was done only if the service of the subpœna had been made on the defendant personally, and had been followed by successive processes of contempt, including sequestration. 3 Bl. Com., 444. It was not until 1732 and by force of St. 5, Geo. II, c. 25, that a decree taking the bill *pro confesso* could

entered unless the subpœna had been personally served, and then only on proof that the defendant had absconded to avoid service.

The principle that a defendant has the right to be heard on review of a judgment, if he did not have notice of the proceedings before judgment, is nothing more than the application to judgments rendered on a default based on service not personal of the fundamental doctrine of the common law, which obtains in England as well as in America, that no judgment can be rendered affecting another's rights of person or property without giving to that other an opportunity to be heard. "It is an essential principle of natural justice that every man have an opportunity to be heard in a court of law upon every question involving his rights or interests before he is affected by any judicial decision of the question." Commonwealth *v.* Cambridge, 4 Mass., 145 & 146 27. To the same effect see Wells, J., in Salem *v.* Eastern Railroad, 98 Mass., 447, 450; Devens, J., in Shores *v.* Hooper, 153 Mass., 228, 230, 231. "In our courts of law you cannot obtain a judgment against a party without entering an appearance for him, so that it shall seem as if he had appeared. He either does actually appear or else you enter an appearance for him, according to the act of Parliament expressly made for that purpose, and made because it is considered an invariable maxim of law that you cannot proceed against a party without his having the opportunity to be heard and without his appearing in court before a judgment shall be pronounced against him." Bayley, J., in Capel *v.* Child, 2 Cr. & Jerv., 558, 579. See to the same effect Parke, B., in Bonaher *v.* Evans, 16 Q. B., 162, 171, 172, where many authorities are cited.

In the light of the well-established general principle that no judgment can be rendered against a man until he has in fact had an opportunity to be heard and the equally well-established application of that general principle that a defendant has the right to be heard in review of a judgment rendered under a statute authorizing judgment against him to be entered in his absence, if he did not in fact have notice of the proceedings before judgment, which principle has obtained since the first statute authorizing service of process at the last and usual place of abode of the defendant, and was a component part of that act, and which has been universally observed since then, the constitutional provisions in question must be construed to guarantee to every citizen the right to be heard before judgment against him becomes irrevocable, and if the judgment on default is based on any service of process other than personal service on the defendant provision must be made giving to a defendant who did not in fact have notice of the proceeding before judgment an opportunity afterwards to have it reversed or to attack it collaterally when it is set up against him. This act does not secure to those named in the application and notice as claiming adverse interests their constitutional right to be heard, and is, in my opinion, for that reason, unconstitutional and void. 147 & 148

But if personal service upon those named as defendants in the application and notice had been required, the act would have been

unconstitutional and void because it undertakes to conclude thos having an adverse interest, whether residents or non-residents, wh are alleged not to be known to the applicant or the examiner, witi out making them parties defendant by name. The act provides tha though they be not named in the application or in the notice, the are made parties defendant by the insertion in the notice of th words "To all whom it may concern," and their rights are extin guished by their non-appearance in answer to that notice.

It is a principle of our jurisprudence brought to this country b our ancestors and recognized here since then that no person i barred by judgment or decree in judicial proceedings according t the course of the common law, in which the plaintiff asserts right of property adverse to his, unless he is named as a party defendant

I have already shown that every defendant named must hav notice of the proceeding before he can be finally and irrevocabl concluded thereby. The complement of that rule which, togethe with it, makes up the full measure of the vested rights of propert in this connection guaranteed to each citizen by the constitution is the rule now under consideration, that no person is barred by judgment or decree in a proceeding the effect of which is to stri him of vested rights of property, unless he is named as a defendant

No principle could be introduced more dangerous to vested right of property than the principle that this rule can be dispensed with in the discretion of the legislature. If this rule is dispensed with no sufficient incentive is left to the plaintiff to name a 149 & 150 parties defendant those who have adverse interests— that is to say, those whose interests, if they are brough in, will lead them to do all in their power to defeat the object whic the plaintiff seeks to obtain by bringing his suit. The only poss ble way of insuring to those having adverse interests an opportu nity to be heard is to require the plaintiff to name them as defend ants under the penalty of their not being barred if not so named If this penalty is removed and a defendant is equally bound whether named or not, there is not only no incentive to name a defendants those who claim an adverse interest, but the law ha thereby offered to the plaintiff the greatest temptation not to nam an adverse claimant, if known, and not to use any diligence wha ever to discover whether there are in fact persons who claim an in terest adverse to his.

The effect of a judgment on a writ of right and of a fine, men tioned in the opinion, are not instances conflicting with the unive sality of the proposition that no person not named therein can l barred by a judicial proceeding. In those cases the world w barred, including all claiming an adverse interest, though not name in the proceeding. But that was the effect of the lapse of the ye and the day. They were not barred by the judgment apart fro the lapse of time, they were barred by the lapse of time after judgment. In other words, the judgment was sufficient to start t running of time against them, and they are barred by the operati of the principle of the statute of limitations.

The reference made in the opinion of the majority of the cou

to the statute of limitations makes it necessary to state in passing that the registration act cannot be supported on the grounds on which the statute of limitations quiets titles against all the world or on any grounds deducible therefrom. It is unquestionably within the constitutional power of the legislature to quiet the title to property by a statute of limitations. The principle of such a statute is that one who is dispossessed of his property must assert his ownership thereto by action within a specified time or be barred thereof—that is to say, cease to be such owner. But no
151 & 152 statute was ever passed providing that an owner in possession of his property could be dispossessed thereof by any lapse of time, and no principle is deducible from the statute of limitations which can justify such a statute or a statute providing that, without naming him as a defendant or without giving him notice, a court can by decree alone, unaided by the subsequent lapse of time, transfer his property to another.

But the main ground on which this provision of the act is sought to be upheld is that of necessity. It is said "if it does not satisfy the Constitution a judicial proceeding to clear titles against all the world is hardly possible, for the very meaning of such a proceeding is to get rid of unknown as well as known claims—indeed, certainty against the unknown may be said to be its chief end—and unknown claims cannot be dealt with by personal service upon the claimants." It is undoubtedly true that the chief end of a proceeding to clear titles is to get rid of the unknown, and that an unknown claim cannot be dealt with by bringing notice of the proceeding home to the claimant, and it is true that it follows from that that a title cannot be cleared by a judicial proceeding unaided by the lapse of time, but it does not follow that titles cannot be cleared. The lapse of time has been the means and the only means heretofore used under our jurisprudence to clear titles against unknown claimants. Under our Constitution it is, in my opinion, the only means available therefor, but it is of importance that it is available, and therefore that the argument of necessity fails. It would be within the constitutional power of the legislature to enact that the effect of some such decree as is provided for in this act, when properly proclaimed and served, should have the effect to put the claimant in possession of the title so set up, and that, if that possession continued unbroken and the decree setting up the applicant's title remained in force unmodified for a specified time, all the world should be barred. If the opinion of the supreme court of Illinois in this connection (People *v.* Simon, 176 Ill., 165, 177, 178) is not to be con-
153 & 154 strued as confined to the particular provisions of that act, it cannot be supported.

Such a requirement would practically enable any person to protect his rights of property by an examination of the records of the court of registration made during the specified term, while under this act it is beyond the power of a person to protect his property from the effect of a decree not subject to be reopened and made in his absence without his knowledge. If he have an estate less than the fee, he can protect himself neither by registering his

own title nor by an inspection of the records of the court. He can do nothing but trust to the chance that the applicant and the examiner may exercise sufficient care to discover his claim, will learn his true name and address, and that if his claim is discovered and the notice is properly addressed and mailed it will reach him in time to enable him to appear in court before a decree has been rendered in his absence, which is beyond the power of any court to change when once it has been made; and if his original title is by prescription, he must trust to the intelligence and good faith of the applicant alone, for the examiner will not in his examination learn of such a title.

But there is an even more decisive answer to the argument of necessity, and that is this: The constitutional provision securing to the owner the right not to be deprived of his property except by due process of law speaks to each citizen directly and personally. It is no answer when a person complains that he had no notice of the proceeding in which the decree was made transferring his property to another to say to him that ninety-nine other persons had notice, and that in ninety-nine cases out of a hundred a person would have notice. This provision is not a glittering generality to be explained away in any such manner to a man whose property has been divested by a decree made in his absence. It is a constitutional guarantee to each citizen, and no citizen can be deprived of the security given by the Constitution to his rights of property for any counterbalancing of the benefits derived by the multitude against the evil suffered by him; it is a constitutional guarantee to each citizen that his property shall not be transferred by the judgment of a court to another without his having had in fact an opportunity to be heard, no matter what the consequences may be. If it means anything short of that, it is not a constitutional guarantee; it is but a rule which may mean something or nothing, as the legislature in its discretion may decide.

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Moreover, this is a constitutional guarantee made to each and every citizen equally and alike. It is no fault of a person residing in the Commonwealth, who has an estate in the land covered by the application, that the applicant and the examiner did not know of his claim if they did not know of it; much less if they allege that they did not know of it when by the exercise of due care they would have known of it.

It is strange, indeed, if a discrimination can be made between two residents within the Commonwealth as to their constitutional right to be heard before an irrevocable judgment is made concluding their rights of property, and that that discrimination should finally depend on the negligence and good faith of their opponent, the applicant, and of the court examiner, and, as has been shown in case of titles by prescription, on that of the applicant alone; and yet that is the conclusion to which the court has come; by the opinion of the court the negligence of the applicant in not discovering the claim of a resident to an interest in the land in question precludes him from having the same right to be heard in defence

his rights of property in that land which his neighbor has, whose
im was discovered; in the first case he is not named as a
fendant, and that service of process which is required in actions
personam need not be made on him; in the latter case the de-
ndant is not barred unless such service of process as is required
actions *in personam* has been made.

There is no precedent for holding that the rights of persons not
med as defendants are barred in any proceeding other than a
proceeding *in rem*, and for the reasons which I have
7 & 158 given I am of opinion that the constitutional rights of
property guaranteed to each and every citizen equally
d alike require that that rule should not be abrogated.

To conclude this part of the discussion, I am of opinion that un-
ss the proceeding under the registration act is to be supported as
proceeding *in rem*, it is without precedent and is contrary to the
le heretofore universally recognized without any exception wher-
er the common law of England prevails, that no party is barred
nless he in fact had an opportunity to be heard—Commonwealth
Cambridge, 4 Mass., 627; Salem *v.* Eastern Railroad, 98 Mass., 431;
nores *v.* Hooper, 153 Mass., 228, 230; Capel *v.* Child, 2 Cro. & Jerv.
58; Bonaker *v.* Evans, 16 Q. B., 162—and I am of opinion that
nless the application is a proceeding *in rem*) a decree under that
t, so far as it affects either the rights of absent defendants named
nd not personally served or absent persons not named, is not due
rocess of law.

I come now to the consideration of the constitutionality of the
t as a proceeding *in rem*.

The act professes to be drawn on the theory that it authorizes a
roceeding *in rem*, and it is plain that the service of the notice pre-
ribed was taken from that used in proceedings in the probate
ourts; it is also plain that there was no attempt to secure a com-
iance with the requirements of an action *in personam*, either with
spect to the service to be made upon those named as defendants
to the necessity of joining as parties defendant all whom the
laintiff wished to have concluded by the decree.

Petitions for probate of a will afford no ground for holding that
e application under the act is a proceeding *in rem*. Where there
a fund in court for distribution, such as the proceeds of a bank-
upt estate or of the property of an insolvent corporation which is in
rocess of being wound up, a general notice to whom it may con-
rn served by publication is sufficient to give the court jurisdiction,
nd it is sufficient because in such cases the object of the proceeding
not to divest an owner of a title which he has, but to entitle him
to share in the fund by proving his right; petitions for
59 & 160 the probate of a will (Bonnemort *v.* Gill, 167 Mass., 338)
and inquests of office to establish an escheat (Hamilton
Brown, 161 U. S., 256) belong to this class. No rights of property
uaranteed by the Constitution have vested in the heir which the
robate of the will or the inquest of office divests; the purpose of
uch proceedings is to ascertain whether such rights shall or shall
ot vest in the heir. Hamilton *v.* Brown, 161 U. S., 256, 268.

More than that, it has never been decided that a decree admitting a will to probate was binding on all the world or that a statute could be constitutionally passed making it binding on all the world. In Bonnemort *v.* Gill, 167 Mass., 338, the only point decided was that notice by publication gave the court jurisdiction to proceed with the petition for probate of the will, but it is perfectly well settled that the decree of the probate court in that proceeding can be vacated on application at any time. Waters *v.* Stickney, 12 Allen, 1; Gale *v.* Nickerson, 144 Mass., 415. In Hamilton *v.* Brown, 161 U. S., 256, it was decided that a statute of Texas was not in violation of the fourteenth amendment which made the decree of escheat therein provided for binding on all the world after notice similar to that provided for by the registration act under discussion. This statute did not go as far as the registration act; the statute directed that the land covered by the decree of escheat should be sold and provided that the proceeds of the sale should be paid to any person who should subsequently prove himself to be the heir. Pasch. Dig., art. 3671; Hamilton *v.* Brown, 161 U. S., 256, 264. That fact was mentioned in the opinion, but does not seem to have been relied upon. The opinion lays down the broad proposition that the decree of escheat is conclusive on the ground that "if such proceedings are had after actual notice by service of summons to all known claimants and constructive notice by publication to all possible claimants who are unknown the final determination of the right of succession, either among private persons, as in the ordinary administration of estates, or between all persons and the State, as by inquest of
161 & 162 office or similar process to determine whether the estate has escheated to the public, is due to process of law." Hamilton *v.* Brown, 161 U. S., 256, 275. So far as that reasoning goes, the case is open to the criticism (first) that the right of succession among private persons in the ordinary administration of estates is not finally determined by a decree of the probate court; such a decree can be vacated at any time—Waters *v.* Stickney, 12 Allen, 1; Gale *v.* Nickerson, 144 Mass., 415—and (second) that the right of succession as between all persons and the State is not finally determined by an inquest of office. Office found in favor of the King did not result in a judgment binding on all the world; it merely entitled him to the possession of the *res;* it did not determine as against the world his or anybody's right of property in the *res*—3 Bl. Com., 259, 260—but the true owner could "avoid the possession of the Crown acquired by the finding of such an office" by petition of right disclosing new facts not found by the office or by his *monstrans de droit*, relying on the facts as found or by traversing the facts found in favor of the King on leave obtained from the court of chancery under its common-law jurisdiction and from the petty bag (Stuart, V. C., in *In re* Parry, L. R., 2 Eq., 95, 97; 3 Bl. Com., 258; *Ex parte* Webster, 6 Ves., 809; *Ex parte* Gwydir, 4 Maddock, 281; 16 Vin. Abr., 86, pl. 1).

Blackstone's qualification (3 Bl. Com., 260) that an owner has "for the most part" a right to traverse facts is inaccurate, and it is true, as

have stated, that the owner has the right in every case to traverse
he facts found by the inquisition. It appears from an inspection
f Sir Henry Finch's Discourse on Law, p. 324, which Blackstone
ites for the qualification, that if the office was found for the King
n a judgment of another court, whereby the owner was attainted
f treason, he could not attack that judgment collaterally in a trav-
rse to the inquisition; that in no way qualifies the right of a
erson to traverse the facts established by office found alone. So
ar, therefore, as the decision in Hamiliton *v.* Brown rests on the
analogy of a final determination of the right of succes-
63 & 164 sion among private persons or between all persons and
the State it cannot be supported.

But the decision was also put on the further ground that "when a
nan dies the legislature is under no constitutional obligation to
eave the title to his property, real or personal, in abeyance for an
ndefinite time." This statement in the opinion, taken in connection
vith the provision of the statute that the petition to have the escheat
stablished could only be filed "when no letters testamentary or of
dministration appear to have been granted" in the county where
his estate would be administered—Pasch. Dig., art. 3658; Hamilton
. Brown, 161 U. S., 338, 265—puts the case on the same footing as
fund in court, especially when it was stated in an earlier part of the
pinion that "the whole object in proceedings for escheat or in pro-
ceedings of administration is to ascertain who are entitled to the
state of a deceased person." Hamilton *v.* Brown, 161 U.S., 338, 368.
When one dies seized of land and no administration is taken out on
his estate, it is plain that his estate is in the same position as a fund
n court. The estate must be handed over to somebody. A general
notice to all to come in and prove their right is sufficient, especially
as the only practical effect is to change the land into money, it being
expressly provided that any one entitled to the land shall be entitled
on application to the proceeds derived by the State from the sale
thereof. Anything short of that might well result in large tracts of
land in such a State as Texas remaining vacant to the detriment of
the public welfare. In the petition for escheat in Hamilton *v.* Brown
it is alleged that on the death of Hamilton, who died seized, "there
are no tenants upon said tract of land and no person is in actual
or constructive possession of said tract of land or any part thereof,
nor is there any person claiming the estate in and to said tract of
land known to the petitioner." Hamilton *v.* Brown, 161 U. S., 338,
358. There is nothing, therefore, in petitions for probate of a will
or to establish an escheat which justifies the application under this
act as a proceeding *in rem*.

165 & 166 The analogy of a libel *in rem* in admiralty is the
analogy which has been most pressed as justifying this
as a proceeding *in rem*, and the general proposition is laid down
that if all the world are barred the proceeding is a proceeding
in rem.

But the test whether particular proceedings are or are not pro-
ceedings *in rem* depends upon whether they "are proceedings
against property alone treated as responsible for the claims asserted

by the libellants or plaintiffs. The property itself is, in such actions, the defendant, and, except in cases arising during war for its hostile character, its forfeiture or sale is sought for the wrong in the commission of which it has been the instrument or for debts or obligations for which by operation of law it is liable." Field, J., in Freeman *v.* Alderson, 119 U. S., 165, 187; to the same effect see Miller, J., in Hine *v.* Trevor, 4 Wall., 555, 571.

That this is the true test of whether a particular proceeding is or is not a proceeding *in rem* is shown by the admiralty rule as to possessory and petitory libels. If the purpose of the libel is the ascertainment of title or delivery of possession of a ship, or if the libel is filed to obtain security for the return of the ship from a voyage undertaken without the consent of the libellant, being a part owner, a libel *in rem* does not lie; the libellant must make the owner a party and make service upon him as in an action *in personam* at law. Benedict's Admiralty Practice, s. 395; Henry, Admiralty Jurisdiction and Procedure, s. 29. There is therefore no authority to be found in admiralty for a proceeding *in rem* where the purpose of the proceeding is the ascertainment and establishment of the plaintiff's title in the *res*.

Whether a particular proceeding is or is not a proceeding *in rem* depends upon the character of the right in the *res* sought to be enforced, which is given by rules of substantive law, when the purpose of the proceeding is to enforce a right of property and not to find an owner for property *in custodia legis*, as in case of a
167 & 168 fund in court, the probate of a will, or an escheat for lack of heirs. It does not depend upon the fact that the plaintiff undertakes to enforce an ordinary right of property in the *res* against all the world; the test is not, Are all the world barred? but it is, Is it a proceeding to enforce a liability for which the *res* is liable, irrespective of who owns it, such a liability that the *res* can be properly impleaded as the respondent, who is liable? If it is, then a proceeding *in rem* lies, and all the world are barred; but if it is not such a proceeding, and is a proceeding to enforce an ordinary right of lien or of property only, the proceeding is not in its nature a proceeding *in rem*, and the legislature cannot make it so by providing that all the world shall be barred. To say that the test of a proceeding *in rem* is the fact that all the world are barred is to confuse cause and effect.

The only proceeding *in rem* known to the common law was an inquest of office, already referred to in connection with Hamilton *v.* Brown, 161 U. S., 256, "which is an inquiry made * * * concerning any matter that entitles the King to the possession of lands or tenements, goods or chattels"—3 Bl. Com., 258—such as an attainder for treason, whereby the guilty party's property was forfeited to the King, or dying without heirs, whereby his lands escheated to the King. It also was the proper remedy to give the King possession of chattels, as in case of wreck, treasure trove, and the like, and forfeitures for offences, as, for example, the forfeiture of the property of a *felo de se*. 3 Bl. Com. 258, 259.

Forfeiture of lands was, by the Body of Liberties of 1641, declared

not to exist in the colony of Massachusetts (Commonwealth *v.* Mink, 123 Mass., 422, 425, 426), and most of the other prerogatives of the King mentioned by Blackstone never obtained here; but the principle of such inquests has been followed in case of forfeitures for offences, and there are several instances where the legislature has declared that personal property should be forfeited if used illegally, and in such cases has properly provided for a pro-
169&170 ceeding *in rem* against it. Familiar examples of this are to be found in Pub. Sts., c. 212, and in Pub. Sts., c. 100, ss. 30–39, providing that certain personal property used in violation of law, including implements used in gaming and liquor kept for sale in violation of the statute, should be liable to be condemned; and many cases of proceedings *in rem* under those acts are to be found in the reports. A very instructive opinion in this connection by the present chief justice is to be found in Commonwealth *v.* Intoxicating Liquors, 163 Mass., 42; see also Attorney General *v.* Municipal Court, 103 Mass., 456; Commonwealth *v.* Gaming Implements, 119 Mass., 332.

Where the purpose of the proceeding is neither to find an owner for property *in custodia legis* nor to enforce a right of such a nature that the *res* itself is properly impleaded as the responsible defendant, but the purpose of the proceeding is to deal with some one's right of property therein, as in case of a possessory or petitory libel in admiralty, the action is not an action *in rem*, but an action *in personam* (Field, J., in Freeman *v.* Alderson, 119 U. S., 185, at pp. 187, 188, and at p. 190), and all parties to be concluded thereby must be named as parties defendant.

In stating that the test and the only test as to whether a particular proceeding is or is not a proceeding *in rem* is this, "Are all the world barred?" the chief justice tacitly recognizes that if this proceeding is upheld as a proceeding *in rem* it is within the constitutional power of the legislature to provide that any property within the territorial limits of the Commonwealth, real or personal, corporeal or incorporeal, may be recovered, or any titles therein or lien thereto established in a proceeding in which no defendant need be named and no notice need be given except notice by publication. If in this proceeding the legislature can change the constitutional right to be heard by authorizing a proceeding *in rem* it may authorize a proceeding *in rem* in any case involving property, and upon its doing so all the rest follows. There is no escape from that conclusion. There is nothing peculiar to this proceed-
171&172 ing. It is a proceeding which may be maintained by any person whether in or out of possession of land to establish the title which he claims thereto.

For the purposes of decision the choice lies between the view which I have set forth on the one hand and on the other hand holding the doctrine that it is within the constitutional power of the legislature by changing the form of the proceeding from an action *in personam* to an action *in rem* to avoid the necessity of complying with the requirements of an action *in personam* in those cases in which, under the constitutional requirements of due pro-

cess of law, it has heretofore been necessary to name as parties defendant all persons who are to be concluded by the judgment or decree, and to give to them actual notice of the pending proceeding and an opportunity to be heard before a judgment, which is final and is not subject to be reviewed or attacked, can be rendered against them.

I will now consider the authorities and points principally relied on by the attorney general which I have not yet disposed of. The attorney general seems to place his main reliance (first) on the statutes as to partition and the cases of Cook *v.* Allen, 2 Mass., 470; Dascomb *v.* Davis, 5 Met., 335, and Foster *v.* Abbott, 8 Met., 586, which have arisen in Massachusetts under them, and (second) on the three cases of Belcher *v.* Mhoon, 47 Miss., 613; Sullivant *v.* Weaver, 10 Ohio, 276, and Shepherd *v.* Ware, 46 Minn., 174.

There is nothing in the statutes as to partition or in the cases arising under them to conflict with the conclusion to which I have come.

It will not be necessary to consider the statutes prior to the Revised Statutes. Prov. Laws, 1742–'3, c. 24 (III Prov. Laws, p. 42); St. 1783, c. 41; St. 1786, c. 53. Prior to the Revised Statutes, the act did not undertake to deal with rights of property either finally or *prima facie;* it dealt only with the right of possession without regard to the right of an owner to enforce his right of property in a writ of right. Dascomb *v.* Davis, 5 Met., 335, 340; Cook *v.* Allen, 2 Mass., 470; Report of Commissioners on Revised Statutes, c. 103; note to s. 30. By reason of the abolition
173 & 174 in the Revised Statutes of the writ of right, the judgment on a petition for partition became equivalent to a judgment on a writ of entry, and it became necessary to protect the rights of property of those who were parties to the partition proceedings, whether they appeared or not, and the provisions which were enacted in Rev. Sts., c. 103, ss. 33–47, were drafted by the commissioners for that purpose. It was provided that if two persons claimed to be entitled to a particular share, the court admitted one of them to act for that share in respect to the partition, and the assignment of land to that share was binding upon the owner thereof, whoever he might be—Rev. Sts., c. 103, s. 41—but he was not concluded as to the ownership of the share so assigned—Rev. Sts., c. 103, ss. 40, 41, 42—and if one claiming to be the owner of a share did not appear in the partition proceedings, he was bound by the assignment of land made to the share claimed by him, but could recover the land so assigned in a suit brought for that purpose. Rev. Sts., c. 103, ss. 39, 40. If one who did not appear claimed to be part owner with another of a share which was assigned to that other, he was bound by the assignment of land to the share, but could recover his part of the land so assigned. S. 43. If one who did not appear claimed to own in severalty any part of the land divided, he was not bound by the partition proceedings, but could recover his land as if no partition proceedings had been had. Rev. Sts., c. 103, s. 38. If any person to whom land had been assigned was evicted, he could have a partition of the residue of the

original land—s. 46—and, finally, if any part owner at the time of the partition was out of the State he was not bound by the partition made, but could within three years after final judgment have a new partition—ss. 34, 35, 36—and full right of review by appeal, and a writ of error could be had to any judgment. Rev. Sts., c. 103, ss. 31, 32; Foster *v.* Abbott, 8 Met., 596, 599. As to the scope of the act, see Commissioner's Report, Revised Statutes, c. 103, notes to ss. 36–40, ss. 40, 41, 42, 43, and Pub. Sts., c. 178, ss. 35–44.

175&176 Neither Belcher *v.* Mhoon, 47 Miss., 613, nor Sullivant *v.* Weaver, 10 Ohio, 276, are cases of much original importance, and in each State there are subsequent decisions under which the land registration act under discussion is unconstitutional. Brown *v.* Levee Commissioners, 50 Miss., 468; State *v.* Guilbert, 56 Ohio St., 575.

In Belcher *v.* Mhoon, 47 Miss., 613, the question of the constitutionality of the act was neither raised by counsel nor passed upon by the court. From the obscure report of Sullivant *v.* Weaver, 10 Ohio, 276, it woul dseem to have been held in that case that a decree in equity founded on process issued against the heirs of a specified decedent was evidence in proving a chain of title. The sole question in the case was whether the plaintiff had made out a *prima facie* case of title in himself. The constitutional question under discussion was not raised. It was objected in argument that the decree could not be collaterally attacked, and there was no suggestion that the defendant was an heir of the decedent.

Shepherd *v.* Ware, 46 Minn., 174, is an authority for the constitutionality of an act providing that in an action to quiet title unknown persons are bound by a notice to all the world, served by publication; but even that decision is no authority for this act. In that case any interested party had a year after judgment to appear and have it vacated. It is expressly stated in the opinion that the statute gave to such unnamed persons "the same right to appear and defend before and after judgment" that was given to named defendants who were served by publication, and it appears by Statutes of Minnesota 1894, s. 5206, that a defendant brought in by publication could within one year after judgment appear and have the judgment vacated if it was wrongly made. For reasons already given I think that opinion, though it does not go so far as this act, goes too far.

The doctrine of Arndt *v.* Griggs, 134 U. S., 316, and Short *v.* Caldwell, 155 Mass., 57, does not reach the question under discussion.

177&178 No State is deprived of its power to deal with property within its limits by the absence of the owner; consequently it is within the power of a State, in case a suit is brought against the non-resident in which the plaintiff seeks to affect the estate of the defendant, but not to entitle himself to a personal charge against the defendant, to proceed against his estate after giving him such notice as the circumstances permit. See Miller, J., in Huling *v.* Kaw Valley Railroad, 130 U. S., 316, 320, 321. But if a title to real estate can be established against unknown claimants in a proceeding in which they are not named

and where service is made by publication only, it must be ported on a principle which is different in kind from the doct of those cases.

It is true that several statutes have been enacted of recent y which undertake to conclude unknown and unnamed defend St. 1882, c. 237; St. 1885, c. 283; St. 1889, c. 442; St. 1893, c. 34(1897, c. 522. The constitutionality of these acts in the counc now under discussion has never been brought before the court. Short *v.* Caldwell, 155 Mass., 57, the only objection raised was lack of jurisdiction by reason of the non-residence of the claim who appeared. In Loring *v.* Hildreth, 170 Mass., 328, the only stitutional objection set up was that constructive service ca reach unborn parties represented in fact by a guardian *ad litem* was conceded in argument that there might be constructive se or unknown persons (p. 329), and that was not considered b court. How far these statutes are void is not now before the c Whether effect can be given to a decree under St. 1889, c. 442 St. 1897, c. 522, when unascertained parties are before the cou a guardian (as in Loring *v.* Hildreth, *ubi supra*), or a decree ag unnamed parties under St. 1897, c. 373, can be supported as l against members of a class sufficiently represented in court, not now be considered.

The conclusion which I have reached is in the main support Webster *v.* Reed, 11 How., 437; State *v.* Guilbert, 56 Ohio St., Brown *v.* Levee Commissioners, 50 Miss., 46; People *v.* Simon Ill., 165.

In the words of Chief Justice Coke: "When authority and cedent is wanting there is need of great consideration l
179 anything of novelty shall be established, and to provide this be not against the law of the land." 12 Rep., 75.

I am authorized to state that Mr. Justice Lathrop concurs in opinion.

180 [Endorsed:] Tyler *vs.* Judges Ct. of Registration. Cer copy of the opinion of the supreme judicial court.

181 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the judges of the co registration established at Boston, in the Commonwealth of M chusetts, Greeting:

You are hereby cited and admonished to be and appear i Supreme Court of the United States, in the city of Washingt the * twelfth day of March next, pursuant to a writ of error fi the clerk's office of the † supreme judicial court of Massachuse the county of Suffolk, wherein William B. Tyler, of Peabody, i county of Essex, in the said Commonwealth, is plaintiff in erro you are defendants in error, to show cause, if any there be, wh

judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Oliver Wendell Holmes, chief justice of the supreme judicial court of Massachusetts, this twelfth day of February, in the year of our Lord one thousand and nine hundred.

OLIVER WENDELL HOLMES,
Chief Justice of the Supreme Judicial Court.

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* Not exceeding 30 days from the day of signing.
† Name of court to which writ of error is directed.

182 Due service of the within citation on the defendants in error is hereby acknowledged.

HOSEA M. KNOWLTON,
Attorney General.

183 & 184 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

Supreme Judicial Court.

I, John Noble, clerk of the supreme judicial court within and for the said county of Suffolk, hereby certify that the foregoing are true copies of—

I. The record in the case of William B. Tyler, petitioner for writ of prohibition, *v.* The Judges of the Court of Registration, respondents, in said supreme judicial court determined, and annexed to and transmitted with said record; of—

II. The assignment of errors.

III. The reservation and report to the full court made by the justice presiding at the hearing.

185 IV. The opinions of the full court; and of all the proceedings in said case, with all things concerning the same, together with—

V. The original citation.

VI. The acknowledgment of service thereon.

In witness whereof I have hereunto set my hand and affixed the seal of said court this twentieth day of February, in the year of our Lord one thousand nine hundred.

[SEAL.] JOHN NOBLE, *Clerk.*

186 In the Supreme Court of the United States.

WILLIAM B. TYLER, Pl'f in Error,
v.
THE JUDGES OF THE COURT OF REGISTRATION, Def'ts in Error.

It is agreed that the plans contained in the transcript of the record be not printed.

J. L. THORNDIKE,
For Pl'ff in Error.
HOSEA M. KNOWLTON,
Att'y Gen'l Mass., for Defendants.

187 [Endorsed:] File No., 17656. Supreme Court U. S., October term, 1899. Term No., 542. Wm. B. Tyler, P. E., vs. The Judges of the Court of Registration. Stipulation to omit part of record in printing. Filed Feb. 27, 1900.

Endorsed on cover: File No., 17656. Massachusetts supreme judicial court. Term No., 542. William B. Tyler, plaintiff in error, *vs.* The Judges of the Court of Registration. Filed February 27th, 1900.